Officium Vicecomitum.

THE Office and Authority OF SHERIFS:

Gathered out of the STATUTES, and Books of the Common LAWS of this Kingdom.

Corrected and very much enlarged.

By *Mich. Dalton* late of Lincolns Inn Esq; and one of the Masters of the CHANCERY.

To which is added an *Appendix* or *Supplement*, containing a Collection of the *Statutes* touching Sheriffs made since Mr. *Dalton*'s writing, which are in force and use at this day; several special Returns of Writs, and the Expositions, Judgements and Resolutions of the reverend and learned Judges, in the several Courts at *Westminster*; upon divers Statutes, Cases and Questions in Law relating to *SHERIFS*; and several other new matters.

The whole, being a work of great use and profit, not only to the Students and Practitioners in the LAW, but to all other the GENTRY of this Land, (on whom the burthen of this Office lyeth) especially to all immediate *High-Sheriffs* and *Under-Sheriffs*.

With a new and copious TABLE, wherein the defects and imperfections of the old Table are supplyed and amended.

The New matter is inserted likewise in the Table, under their proper Heads, and have this mark * set before them.

Our Country is the Common Mother of us all.

LONDON:

Printed by John Streater, James Flesher, and Henry Twyford, Assigns of Richard Atkins, and Edward Atkins, Esquires.

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Anno Dom. M. DC. LXX.

Cum Gratia & Privilegio Regiæ Majestatis.

TO THE READER.

READER,

THE saying of the Wise man, *That much reading is a weariness to the flesh*, I have found by experience to be true. Nevertheless a Man should never be weary of well doing; and therefore this Labour of mine, howsoever weakly done, yet tending to the Weal publick, and common good of my Country, I have once again thought meet to offer to the publick view, partly in duty to the Kings most excellent *Majesty*, and partly in zeal to the benefit of my Country. The scope of this Book is principally the preservation of his *Majesties* peace, the Execution of Justice, and the keeping of his *Majesties* Rights: The first whereof, is the safety of his *Majesty*, and of all his Subjects; The second, is the life of his Laws: And the last, the Maintenance of his Honour, and Regal Estate; wherein I have endeavoured to do his *Majesty* the best service I can. The second thing aimed at in the composing of this Book, is the good of my Country; herein setting forth the Office, Authority, and Duty of Sheriffs, who are His *Majesties* Deputies in their Counties, and have com-

mitted unto them (*Cuſtodiam Comitatus*) the charge of the whole County; the execution of whoſe charge in every of the three former particulars, tendeth not only to the good of the Prince, but alſo of all his people. I adviſe the Gentry of this Land, (upon whom the burthen of this Office lyeth) that they be careful how they transfer, and turn over this their authority and charge, to their Underſheriffs and Officers, or to men of mean eſtates, who many times looking only after their own private profit, neglect the publick, regarding little or nothing either the preſervation of the Kings rights, or the common good of the Country: for ſuch men not only too often uſe much deceit to the King in concealing his Rights and Duties, and much oppreſſion to his Subjects, but bring hazard to the High Sheriffs themſelves, by the breach of their oaths to God, and by the indamaging of their eſtates and credit in their Country: beſides the ſo daily and manifold oppreſſions and extortions in divers parts of this Realm, to the intollerable grievances of the Subjects. All theſe in ſome meaſure I have herein diſcovered, and plainly ſet down the Authority and Office of the Sheriff, that ſuch as hereafter ſhall undergo the place, may more fully underſtand themſelves, and their duty, and how to execute or ſee to the executing of their ſaid offices according to their oaths; whereby they ſhall the better perform their Duties to GOD, their Prince, and their Country. The ſervice of whom in this preſent undertaking, hath been the only deſign of,

Your Well-wiſher,

MICHAEL DALTON.

The Office and Authority of SHERIFS, gathered out of the Law-Bookes, and Statutes of this REALM.

CAP. 1.

The Name, Antiquity, and Charge, &c.

Co. 9. 49. & 97.

THe moſt eminent and ſupreame dignity from the Conqueſt until the 11. year of King Edward the third, was the Earl or Counteſ, being anciently of the blood Royal, and taking their names Comites à Comitatu, or (as ſome have it) Comites nomen acceperunt à comitando, quia principem comitarentur ad bella publicaque negotia, ejus lateri ſemper hærentes: Or as another ſaith, Kings vouchſafed to call them Comites, Companions; for that both out of their love they will, and out of knowledge can, and out of courage (the true ground of ancient Nobility) dare to adviſe boldly and truly upon every occaſion: And theſe were of antient time Præfecti ſeu Præpoſiti comitatus, the Rulers or Governors of the Counties or Shires under the King, for ſo imports the Saxon words, ſcil. Shire Reve, id eſt, *le Reve del Shire*, which is as much as Præpoſitus comitatus. And theſe Earls had anciently committed to them from the King the charge and cuſtody of the County, which the Sheriff now hath. Smith de Repub. Anglor. pag. 59. *Comes.*

And herewith agreeth another Writer, ſaying, King Ælfred firſt dividing this Kingdom into ſeveral Counties (or Shires) inſtituted a Prefect or Lieutenant in every of thoſe Counties, which then were called Cuſtodes, Keepers, and afterwards Comites, Earls, who were to keep the County in obedience to the King, and to ſuppreſs the outrages of notorious Robbers. Speed 4.

Sir Edw. Cook, lib. 5. telleth us, that County is fetched from the French, and Shire from the Saxon, and in Latine it is called, Comitatus à Comitando, for accompanying together; for men of one County do accompany together at their County Courts, Turnes, Leets, and other Courts. And that there be in England 40. Counties, and in Wales twelve. (ibid. 109. b.) Mr. Cambden, pag. 159. numbreth 39. Shires, and in Wales 13. So in all there be hers 52. Shires at this day.

So then County, Comitatus, ſignifieth as much as Shire; the

one coming from the French, the other from the Saxons: Both containing a circuit, or portion of the Realm, into which the whole Land is divided, for the better Government thereof, and the more easie administration of Justice.

There is no part of the Kingdom that lyeth not within some County.

Of these Counties there be four of special mark, and are termed County Palatines, as the County Palatine of Lancaster, of Chester, of Durham, and of Ely. And the chief Governors of these County Palatines, by especial Charter from the King, did heretofore all things touching Justice, absolutely, and in their own Name: But by the Stat. 27 H. 8. c. 24. this power of theirs is much abridged.

There be also Counties Corporate; and these be certain Cities, or ancient Boroughs, upon which Kings formerly have bestowed such extraordinary Liberties; as the Cities of London, York, and Chester, Canterbury, Kingston upon Hull, Lichfield, and Haverford, &c. Minsh. See Co. Littl. 109.

Every County is now Governed by a yearly Officer, whom we call a Sheriff.

But the three honourable names, titles, and dignities of Dukes, Marquesses, and Vicounts, they came in long after the Conquest: the name or title of Duke being no name of dignity in England, until the time of King Edward the third, who first created his eldest Son Prince Edward (called the Black Prince) Duke of Cornwall, and after also created his other sons Dukes. Co. 9. 124. & Co. l. 69. Cambden 165.

And Marquesses, their title or name was not before the time of King Richard the second; Robert Earl of Oxford being then made the first Marquesse, as appeareth by Master Cambden in his Britannia. & Co. 9. 124.

And Dominus de Bello Monte, was the first Vicount, and Created by King Henry the 6. Co. l. 69.

Vicecomes. The Sheriff, Vicecomes, est vicem gerens, seu Vicarius Comitis, or the Earls Deputy, following and doing that service in the executing all matters of Justice, as the Earl should do. And ancient Kings ordained in every County these Sheriffs, to keep the Peace &c. when the Earls were absent from their charges: and for the administration of Justice to every man within each County; and to be attendant to the King, and his Justices for the executing of their Commands. Co. 7. 33. & 9. Preface.

It seemeth that Earls, by reason of their high imployments, and attendance upon the King, being not able to follow also the business of the County, were delivered of all that burden, and only enjoyed the honour as now they do: and that labour was laid upon the Sheriff; so that now the Sheriff doth all the Kings business in the County: And the Sheriff though he be still called Vicecomes, yet all he doth, and all his Authority is immediately from and under the King, and not from or under the Earl. So then at this day the Sheriff hath all the Authority, for the Administration and the Execution of Justice, which the Countie or Earl had, the King by his Letters Patents now committing to the Sheriff Custodiam Comitatus. Co. 9. 49. See the Patent of his office hic postea.

Master

Maſter Cambden, pag. 160. thus deſcribeth them; Every year ſome one of the Gentlemen Inhabitants, is made Ruler of the County wherein he dwelleth, whom we call in Latine Vicecomitem, as one would ſay, the Deputy of the Comes or Earl, and in our Tongue, Sheriff, that is, the Rëeve of the Shire.

And although the King by his Letters Patents granteth to the Sheriff Cuſtodiam Comitatus, without any expreſs words to make a Deputy, yet the Sheriff (qui gerit vicem Comitis) who cometh now in place of the Countée, may make his Deputy, his Subvicecomes, or Undersheriff. But this Deputy hath not, or ought not to have any intereſt or eſtate in the Office; but is only as a ſhadow of the Officer, and doth all things in the name of the Officer himſelf, and for whom his Grantor muſt anſwer, Co. 9. 48. B. *Subvicecomes.*

And ſo the Undersheriff hath not, or ought not to have any Eſtate or Intereſt in the Office it ſelf; neither may he do any thing in his own Name, but only in the Name of the High Sheriff himſelf.

Co. 9. 49. In ancient time this Officer was called Seneſchallus Vicecomitis; and in the Statute of Weſtminſter 2. cap. 39. (made Anno 13 Ed. 1. et Anno Dom. 1285.) he is called Subvicecomes, and in the Statute made 11 Hen. 7. cap. 15. he is called the Shire Clerk. Co. 9. 49. Or the Clerk of the County, Dyer 355. Sée Mittons Caſe, Co. part 4. & hic Cap. 118.

Note, that by the Common Law, he which hath an Office of truſt cannot make a Deputy without expreſs words in his Patent (or Grant) ſo to do, as appeareth in divers of our Books, Plo. 379. Littl. 379. Dyer 278. Br. Deputy 7, 9. 11 E. 4. fol. 1. &c. Now the Office of the High Sheriff is an Office of great truſt and confidence; and therefore he cannot make any Deputy in ſuch things as concerns his Judicial power; nor may Let, or Aſſign over his Office in any manner. And as for matters concerning his Miniſterial Office, he may make and appoint under him, his Under-ſheriff, and other his Bayliffs and Deputies, who may occupy their places in the Right of the High Sheriff, and as his Servants only, as it ſeemeth.

Alſo the High Sheriff, as he is an Officer or Miniſter only, he may make a Deputy concerning his Office, ſcil. He may make his Precept to another to arreſt the party; or he may ſerve a Capias, or other Proceſs by his Bayliff or ſervant, &c. But where the Sheriff is made a Judge of the cauſe (as well as an Officer) there he cannot make a Deputy, but there he muſt ſit and execute the ſame in his own perſon, and not by his Under-ſheriff, or other Deputy, otherwiſe the proceedings will be erroneous, 21 H. 6. 37. & 9. E. 4. 31. Br. Deputy 19, 20. Sée plus hic. Cap. 3, 4, 81, 93, 113. & 122.

And ſée hic, cap. 2. fol. God adviſe to the High Sheriffs, to kéep their Office in their houſe.

Sheriffs were great Officers, and Miniſters of Juſtice (as now they are) long time before the Conqueſt, Co. lib. 3. Preface. & 4. fol. 33. *Their Antiquity.*

Cambden, 158. Co. 9. Preface. Yet Maſter Cambden ſheweth out of Ingalphus, that Sheriffs were firſt ordained of King Ælfred (or Alfred, otherwiſe called Alured in our Engliſh Chronicles) who Reigned about Anno Dom. 872. And that he firſt divided England into ſeveral Counties, and after cauſed the

Counties (or Shires) to be parted into Centuries, which they now call Hundreds, and into Decimes, which they call Tythings, and that every Englishman living under Law as a Liege Subject, should be within one Hundred and Tything or another; and if a man were accused of any transgression, he should bring in straightways some one out of the same Hundred and Tything, that would be bound for his appearance to answer the Law; but he that could not find such a surety, should abide the severity of the Laws: and in case any man standing thus accused (either before, or after Suretiship) fled, then all that Hundred and Tything incurred a Mulct or Fine to be imposed by the King. He also divided the Governors of the Provinces (which before were called Vice Domini, that is, Vice Lords) into two Offices, to wit, Judges, now Justices, and Vicecomites, that is, Sheriffs, which still retain the same name: hæc Cambden, out of Ingulphus, and Malmsbury.

A Town is a Precinct, anciently containing ten Families, whereupon in some Counties they are still called Tythings. Finch 80.

Those Tythings contained each of them ten houlholds, or ten persons, whereof every one was Pledge for anothers good Abearing (or Behaviour) who had one Chief called the Tythingman: And each Hundred had under their Verge ten such Tythings; and when any was chosen the chief of the Hundred, at the usual place of their meeting (after some reverence) every one with their Lances touched a Spear, which the Chief held upright in his hand, and by that Sign vowed to be peaceably Ordered, whence such a Society was called a Wapentake, (scil. a touching of Weapons.) Finch. 126. Vid. Co. l. 109.

Besides in these Wapentakes (or Hundreds) many affairs were handled, and what could not be there decided, was referred to a meeting of greater Jurisdiction, containing usually three Hundreds, called in some places a Lath; and what could not be there defined, was referred to the whole Shire: for dispatch of which greater affairs, King Alfred appointed both Judges, and Sheriffs (as aforesaid) in every County. Speed 4.

And yet Minsh. verbo Wapentake, saith, that Wapentake is all one with that which we call an Hundred: shewing the same out of Bracton, and Mr. Lambard, and the Laws of King Edward: And he further sheweth the reason of the Denomination, to be their touching of Lances or weapons as aforesaid: And that this word is at this day used, especially in the North Countreys by the River Trent.

Facta etiam Ministrorum suorum diligenter investigavit, adeo ut quos ex avaritia, aut imperitia errare cognosceret, ab officio removebat. This King Alfred did also diligently search out the doings of his Officers, so that if he knew any of them to erre, either through covetousnes, or unskilfulnes, them he removed from their office. Fox. 129.

Also this word Sheriff, or Shireve, is derived of two Saxon words, viz. of *Scyre*, that is, the Shire or County, and *Reve*, that is, Keeper or Guardian, and so *Scyre Reve* is the Keeper or Guardian of the Shire. Co. 4. 33. St. 9. 97. Co. L. 168.

But albeit the Saxons in their time gave this Officer the vulgar name

name uſed to this day, yet it is manifeſt that the office was of ancient time, and before the Saxons ſet any foot in England. Co. 9. Preface. So alſo before the time of the Saxons coming into England, and long before the time of King Alfred, this Kingdom was divided into Shires or Counties, but King Alfred in his time made the moſt certain diviſion of them; for where during the time of the Heptarchy, there were many incroachments one upon another, and many ancient bounds obſcured, all that he reformed by his exact partition. Co. 9. Preface. Co. L. 168. *Their name proves not their Antiquity.*

And Sir Edward Cook ſup. Littl. fol. 168. ſheweth that Sheriffs, Shires, and Counties were long before, ſc. in the time of the Romans, and before; and that by the Romans this Officer was called Vice Conſul; the Romans calling that Conſulatum, which we call Comitatum.

The Sheriff then, as his name purports him to be the Keeper or Governour of the County, ſo to this day his Patent is, Commiſſimus tibi cuſtodiam Comitatus; And thereby he hath not only the charge or keeping of the Kings rights of his Crown within his County, but alſo the keeping of the peace; And hath power to levy Poſſe Comitatus, ſc. ſo many men as he ſhall think meet to go with him to apprehend Traytors, Felons, Riotors, and the like offendors againſt the peace; Or for to execute the Kings Writs or Proceſs, or the Precepts or Warrants of the Kings Juſtices, &c. And alſo he hath the cuſtody of all the common Gaoles in the County now committed unto him: Beſides he hath the Adminiſtration of Juſtice committed to him within his County, ſc. within his Tourne to enquire of, and deal with matters touching the King himſelf, and with matters concerning the Commonwealth; as alſo in their County Courts to hear and determine particular ſuits, and matters between party and party: for all which ſee hic poſtea. Cap. 106, 109. & 3. See Co. L. 168. ſaith that the Sheriff hath triplicem Cuſtodiam, viz. vitæ Juſtitiæ, vitæ Legis, & vitæ Reipublicæ, &c. vitæ Juſtitiæ, to ſerve proceſs, and to return indifferent Juries for the trial of mens lives, liberties, lands and goods: vitæ Legis, to make execution, which is the life of the Law: & vitæ Reipublicæ, to keep the Peace, &c. *Their charge.*

12 H. 7. fol. 17. So then at the firſt all adminiſtration of juſtice was in one hand, ſcil. in the Crown, but afterwards (by reaſon of the multitude of people) the adminiſtration of juſtice was divided into Counties, and the power was committed to one deputy within every County, ſcil. firſt to the Earl, and after (in his abſence, and now ſtill) to the Sheriff as is aforeſaid, who was, and now alſo is appointed to be the Kings deputy to keep the peace; and that all the people ſhould be obedient to him, and ready at his command in defence of the Realm, when any of the Kings enemies ſhould come; and ſo he was and is appointed to be a Conſervator of the peace, and to ſuppreſs and punish malefactors within his County, and to defend the Realm when enemies ſhould come, and to be attendant upon the King in time of War, and to cauſe all the people within his County to go with the King for to defend the land againſt the Kings enemies, &c.

Co. 4. 33. So that the high Sheriff (Vicecomes) is an Officer of great antiquity, and of great truſt and authority, having from the King the cuſtody

ſtody, képing, command, and government (in ſome ſort) of the whole County committed to his charge and care.

What manner of perſons.

And for that this Office is of ſo great truſt and confidence, it is méet that ſuch perſons as ſhall be choſen thereunto, be men of good ſufficiency, and ſuch as may attend it, leſt otherwiſe the King be much indammaged, and his people be diſinherited, and oppreſſed; and to this purpoſe the Statutes made 9 Edw. 2. de Vicecomitibus. 2 Edw. 3. c. 4. 4 Edw. 3. c. 9. & 5 Edw. 3. c. 4. have ordained, that no man ſhall be Sheriff in any County, except he have ſufficient lands within the ſame County (or Shire) where he ſhall be Sheriff, whereof to anſwer the King, and his people, in caſe that any man ſhall complain againſt them.

Neither ſhall any Steward, or Bayliff to any great Lord, be made Sheriff (except he be put forth of ſervice) but ſuch perſons only ſhall be appointed, as may wholly attend to ſerve the King, and his people. Statute 9 Ed. 2. Lincoln.

Their election.

The High Sheriffs are to be choſen or aſſigned yearly by the Lord Chancellor or Képer of the Great Seal, the Lord Treaſurer of England, the Préſident of the Kings Councill, the Képer of the Kings Priby Seal, and the chief Baron of the Exchequer, taking to them the chief Juſtices of the one Bench and of the other, as appeareth by the Statutes of 14 Ed. 3. cap. 7. & 21 Hen. 8. cap. 20. and after are appointed by the King; whereas in former times they were choſen in the full Counties, by the Commons of the Country, as it appeareth by the Statute made 28 Ed. 1. c. 8. & 13. Stat. 9 E. 2.

And this Election or Nomination of the Sheriff ſhall be done yearly on the morrow after All Souls, at the Exchequer by the Statutes 9 Ed. 2. et 14 Ed. 3. c. 7.

And the Kings Letters Patents whereby the new Sheriffs are made, do commonly bear date the ſixth day of November. 12 Ed. 4. c. 1.

And yet the King by his Prerogative may make and appoint the Sheriff, without this uſual aſſembly, and Election, or Nomination in the Exchequer, as it happened, Anno 5 Eliz. vide Dyer 225.

Alſo the Sheriffs in every of the Shires of Wales, ſhall be nominated yearly, by the Lord Préſident, Council, and Juſtices of Wales, and ſhall be certified up by them, and after appointed and elected by the King, as other Sheriffs be, 34 H. 8. c. —— 26.

Cannot be divided.

The Office of a Sheriff cannot be apportioned or divided; and therefore when the King maketh or appointeth one to be Sheriff durante bene placito, although the King may determine this his Office at his pleaſure, yet he cannot determine it in part, as for one Town or one Hundred, or any other part: neither can he abridge the Sheriff of any thing incident or belonging to his Office, for the Office is entire, and ſo it muſt continue in that intierty for the whole County, without any fraction or diminution (except it be by act of Parliament, or that the King ſhall make ſome Town, &c. a County of it ſelf, and ſhall appoint there a Sheriff, Co. 4. 33.

and

and all things belonging to a Sheriff within the ſame Town, &c.) Neither can the office of a Sheriff be determined, nor any part thereof, without and untill a new Sheriff be made for the execution and adminiſtration of Juſtice (except it be by the death of the King, or of the Sheriff) Co. 4. 33. Finch. 12. See here poſtea tit. County Court, & hic c. 2.

CAP. 2.

2 & 3 Edw. 6. cap. 34.

NOw the firſt thing that every new elected Sheriff muſt do at the entrance into his Office, is, that forthwith before he receives his Patent, and before he doth exerciſe any part of the ſaid Office, he muſt put in ſufficient ſureties by himſelf, or by his ſufficient Deputy or Deputies, into the Kings Exchequer (ſc. in the Kings Remembrancers Office there) and there muſt enter into recogniſance in ſuch ſum, and upon ſuch conditions (as it ſeemeth) as the Lord Treaſurer, and Barons of the Exchequer ſhall think meet, upon pain of every Sheriff making default therein, to forfeit to the King an hundred pounds to be levied of his lands and goods whereſoever, &c. by proceſs to be made out by the ſaid Barons, ſee the Statute of 2. & 3. Ed. 6. c. 34.

1. *He muſt enter Recogniſance.*

And yet it ſeemeth, that the condition of ſuch recogniſance is uſually for the payment of the Sheriffs proffers, or for the making of his accompt in the Exchequer, which is twice in the year; that is to ſay, at or before menſe Paſche, and menſe Michaelis. See the form of his recog. hic c. 124.

The high Sheriff (or ſome other for him) having entred into Recogniſance with ſureties in the Exchequer as aforeſaid, his Attorney there will write him a note, thereby ſignifying that he is Sheriff of ſuch a County, and that he hath entred recogniſance as aforeſaid. The which note muſt be delivered to one of the ſix Clerks in the Chancery for his warrant to make the Sheriffs Patents by (ſc. the Patent of his Office, with his writ of aſſiſtance:) And beſides, a writ of diſcharge, to be delivered to his Predeceſſor, to diſcharge him out of his office; the which ſhould be delivered with all ſpeed, for his own benefit or his Undertheriffs; for untill it be delivered to his Predeceſſor, the precedent Sheriff may do execution of all proceſs.

2. *He muſt procure his Patents.*

The high Sheriff hath this authority given him by two Patents; by the one the King commits to him the cuſtody of the County; by the other the King commands all other his ſubjects within that County to be aiding and aſſiſting to the Sheriff, in all things belonging to his ſaid Office.

The forms of the ſaid Patents are as followeth.

The

The first Patent of his Office.

CArolus Dei gratia Rex Angliæ, Scotiæ, Franciæ, & Hiberniæ, fidei defensor, &c. Omnibus ad quos præsentes literæ pervenerint salutem. Sciatis quòd Commisimus dilecto nobis *A. B.* Militi Comitat. nostrum Cantabrig. cum pertinent' custodiend. quamdiu nobis placuerit, Ita quod firmas debitas nobis reddat annuatim, ac de debitis nostris, & omnibus aliis ad officium vic' comit' nostri predict' spectant' nobis respondeat ad Scaccar' nostrum, in cujus rei Testimonium has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die anno Regni nostri &c.

The Patent of Assistance.

CArolus Dei grat Rex Angliæ, Scotiæ, Franciæ, & Hiberniæ, fidei defensor, &c. Archiepiscopis, Episcopis, Ducibus, Comitibus, Baronibus, Militibus, liberis Hominibus, & omnibus aliis de com. Cantabr. salutem. Cum concesserimus dilecto nobis *A. B.* Militi officium vic' com nostri præd. cum pertinent', habend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde confectis plenius continetur, vobis mandamus quod eidem *A. B.* tanquam vicecom. nostro com predict' in omnibus quæ ad officium illud pertinen. intendent' fitis auxiliantes & respondentes. In cujus rei testimon. has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die Anno regni nostri &c.

So that the Sheriff is made by Letters Patents of Record, and therefore if it shall come in question whether he be Sheriff, or not, that may be tried by the Record; or it may be tried by the examination of the Sheriff himself. 10 H. 4. 7. 32 H. 6. 27. Co. 9. 31.

The form of the Writ of discharge directed to the old Sheriff.

CArolus &c. dilecto sibi *R. S.* armig. nuper vicecom. Cantabr. salutem. Dyer 355. Cum concesserimus dilecto &c. nobis *A. B.* militi Com. nostrum prædict' custodiend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde concess. plenius continetur, tibi præcipimus quod eidem *A. B.* com. nostr. prædict' cum pertinentiis, una cum rotulis, brevibus, memorand. & omnibus aliis ad officium vicecom prædict' spectant', quæ in custodia tua existunt, per Indenturas inde inter te, & præfatum *A. B.* debite conficiend. liberes. Teste meipso apud Westmonaster. quinto die &c.

And yet it seemeth by the Register fol. 295. **that there be (or have been) two Writs or Commissions to this purpose: The first a Writ of discharge in these words.**

Rex omnibus ad quos &c. salutem. Sciatis quod commisimus dilecto Co. 3. 72. nobis *A. B.* &c. (**who is the new Sheriff**) com. nostrum Cantabr. cum pertinen. custodiend. quamdiu nobis placuerit &c. In cujus rei &c.

And then another Writ is directed also to the old Sheriff, and the effect thereof is thus.

Et mandatum est *R. S.* armiger. nuper vic. com. prædict' quod eidem *A. B.*

A. B. milit', com. prædict' cum pertinentiis, una cum rotulis, brevibus, memorand. & omnibus aliis officiū. illud tangent', quæ in cuſtodia ſua exiſtunt, per Indenturas inde, modo debito conficiend' liberet cuſtodiend. in forma præd. Teſte &c.

Alſo every Sheriff before he ſhall take upon him to uſe or exerciſe his ſaid office, muſt take and pronounce two corporal oaths upon the holy Evangeliſts, the one to the Kings ſupremacy, the other concerning the due execution of the Office of a Sheriff. 3. *He muſt take his Oathes.*

The oath to the ſupremacy the Sheriff is to take by force of the ſtatutes made 1 Eliz. c. 1. & 5 Eliz. c. 1.

The form of which Oath followeth.

I *A. B.* do utterly teſtifie and declare in my conſcience that the Kings Highneſſe is the only ſupreme Governour of this Realm, and of all other his Highneſs Dominions and Countries as well in all ſpiritual things or cauſes as temporal, and that no forrain Prince, Perſon, Prelate, State, or Potentate, hath or ought to have any Juriſdiction, Power, Superiority, Preheminence, or Authority, Eccleſiaſtical, or Spiritual, within this Realm, and therefore I do utterly renounce and forſake all forrain Juriſdictions, Powers, Superiorities, and Authorities, and do promiſe, that from henceforth I ſhall bear faith and true allegiance to the Kings Highneſs his heirs and lawfull ſucceſſors, and to my power ſhall aſſiſt and defend all Juriſdictions, Priviledges, Preheminences, and Authorities granted or belonging to the Kings Highneſs, his heirs and ſucceſſors, or unired or annexed to the Imperial Crown of this Realm, ſo help me God, and by the contents of this book. *To the Supremacy.*

The oath concerning the Office of the Sheriff, ſeemeth to be by the ancient Common Law of this Land, ſee Dyer folio 168.

The form whereof is as followeth.

Regiſt. 301. YE ſhall ſwear, that well and truly ye ſhall ſerve the Kings Majeſty in the Office of the Sheriff of the County of Cambridge, and do the Kings profit in all things that belongeth to you to do by way of your Office, as far forth as you can or may, you ſhall truly keep the Kings rights, and all that belongeth to the Crown, ye ſhall not aſſent to decreaſe, to leſſing, ne concealment of the Kings rights, or of his Franchiſes, and whenſoever you ſhall have knowledge that the Kings right, or the rights of his Crown been concealed or withdrawn, (be it in Lands, Rents, Franchiſes, or Suits, or any other things) ye ſhall do your true power to make them to be reſtored ro the King again, and if you may not do it ye ſhall certifie the King, or ſome of the Council thereof, ſuch as you hold for certain will ſay it to the King; ye ſhall not reſpite the Kings debts for any gift or favour, where you may raiſe them without great grievance of the debtors; ye ſhall truly and rightfully treat the people of your Sheriffwick, and do right as well to poor as to rich, in all that belongeth to your Office; ye ſhall do no wrong to any man for any gift or other beheſt, or promiſe of goods, for favour, nor hate; ye ſhall diſturb no mans right; ye ſhall truly acquit at the Exchequer all thoſe of whom ye ſhall any thing receive of the Kings debts, ye ſhall nothing take whereby the King may loſe, or whereby the right may be letted or diſturbed, or the *Concerning the Office.*

King delayed, ye ſhall truly return and truly ſerve all the Kings writs as far forth as ſhall be to your cunning, ye ſhall not have to be your * Undersheriff of any of the Sheriffs Clerks of the laſt year paſſed; ye ſhall take no Bayliff into your ſervice, but ſuch as you will anſwer for; ye ſhall make each of your Bayliffs to make ſuch oath as you make your ſelf in that belongeth to their occupation; ye ſhall receive no writ by you or any of yours unſealed, or any ſealed under the ſeal of any Juſtice, ſave of Juſtices in Oyer, or Juſtices aſſigned in the ſame Shire where ye be Sheriff in, or other Juſtices having power and authority to make any writs unto you by the Law of the Land, or of the Juſtices of Newgate; ye ſhall make your Bayliffs of true * and ſufficient men in the County. * Alſo ye ſhall do all your power and diligence to deſtroy and make to ceaſe all manner of hereſies and errors commonly called Lollaries within your Bailywick from time to time to all your power, and aſſiſt and to be helping to all Ordinaries and Commiſſioners of the holy Church, and favour and maintain them as oftentimes as ye ſhall be required by the Ordinaries Commiſſioners: ye ſhall be dwelling in your own proper perſon within your Bailywick for the time ye ſhall be in the ſame Office, (except you be otherwiſe licenced by the King;) ye ſhall not let * your Sheriffwick, nor any Bailywick thereof, to any man; ye ſhall truly ſet and return reaſonable and due iſſues of them that be within your Bailywick, after their eſtate and behaviour; and make your pannels * your ſelf of ſuch perſons as be moſt next, moſt ſufficient, and not ſuſpect, nor procured, as it is ordained by the ſtatutes; and over this in eſchewing and reſtraint of the manſlaughters, robberies, and other manifold grievous offences that be done daily, (namely by ſuch as name themſelves ſouldiers, and by other vagrants, the which increaſe in number and multiply, ſo that the Kings ſubjects may not ſure ride nor go to do ſuch things as they have to do, to their intollerable hurt and hinderance;) ye ſhall truly and effectually with all diligence poſſible to your power execute the ſtatutes, as the ſtatutes of Winchester and Vagabonds: All theſe things ye ſhall truly obſerve and keep, as God help you, and by the contents of this book.

* Nota.

* Nota.

* Le reſidue del ſeremente, que hic ſequitur fuit inſert de puiſne temps, come appiert per le Regiſter, fol. 301.

* 4 H. 4. c. 5. 23 H. 6. c. 10.

* Nota.

The parts of this laſt Oath, are ſhortly theſe.

The Kings Right. 1. **Truly to keep the Kings Rights of his Crown, (ſcz. his Lands, Rents, Franchiſes, Suits, and all other things within that County, belonging to the Crown) without leſſening or concealment of them; or elſe to certifie the King, or ſome of his Council thereof.**

The Kings debts. 2. **That he ſhall not reſpite the Kings Debts, where they may be raiſed without great grievance of the Debtor.**

Right to all. 3. **To do Right to all, as well poor, as rich, in all things belonging to his Office.**

The Kings debtors. 4. **Truly to acquit at the Exchequer (upon his Accompt) all ſuch of the Kings Debtors of whom he hath received any of the Kings Debts.**

Writs. 5. **Truly to ſerve and return all the Kings Writs,**

Under-ſheriff. 6. **Not to have to his Under-ſheriff, any of the Sheriffs Clerks of the year laſt paſt.**

Nota, & quære how Sheriffs perform theſe two parts of their Oath.

7. To

7. To take no Bayliff, but ſuch as he will anſwer for; and ſuch as be true and ſufficient men in the County. *Bailifs.*

8. To make each of his Bayliffs to take an oath, for the true exerciſe of his Office.

9. To receive no Writ unſealed: Nor any ſealed, except by Juſtices having authority to make Writs unto him, by the Law of the Land. *Writs.*

10. To ſuppreſs Hereſies (called Lollaries) and therein to aſsiſt the Ordinary, being required. See hic Cap. 101. Some reaſons why this Oath herein were meet to be amended, ſcil. the Word Lollaries to be left out at the leaſt. *Hereſies.*

See the Stat. 4 H. 4. cap. 5. 11. To be dwelling in perſon within his Bayliwick (or County) for the time he ſhall be in this Office, except he be otherwiſe licenſed by the King. *To be reſident.*

12. That he ſhall not let to Farm his Sheriffwick, nor any Bayliwick thereof. 4 H. 4. c. 5. & 23 H. 6. c. 10. *Not to farm.*

Note that by this Letting to Farm, is underſtood the aſsigning or granting of the Profits of his Sheriffwick, or Bayliwicks, ſo as the Grantée by ſuch Grant taketh (or may take) the profits to his own uſe. Vide hic cap. 3. & 117.

13. Truly to ſet, and return reaſonable and due iſſues, after the eſtate of the perſons. *Iſſues.*

* Quære how this is is performed. 14. To make the Pannels * himſelf; and of ſuch perſons as be next neighbours, moſt ſufficient and not ſuſpect, nor procured. *Juries.*

15. Truly and effectually, with all diligence to execute the Statutes of VVincheſter and of Vagabonds. St. *Winch.*

Concerning this laſt part of this Oath, the Statute of VVincheſter (made 13 Edw. 1.) commandeth that freſh ſuit be made, from Town to Town, and from County to County, after Felons (ſcil. upon Robberies, Murders, Burning of Houſes, and other Felonies committed:) And that Night-watches be duly kept, for the arreſting of ſuſpected perſons, (who are to be delivered to the Sheriff;) and that high wayes be inlarged, that Felons and evil doers may not lurk therein to do hurt, &c. and of all theſe things the Sheriff is to Enquire in his Towne: ſée hic poſtea tit. Torne.

Now what elſe the Sheriff may or ought to do in theſe Caſes: It ſéemeth by the ſaid Statute of VVincheſter, c. 1, 2, & 4. and by the Statute made 5 Ed. 3. cap. 14. That if any perſon ſuſpected for Felony ſhall be apprehended by the Country, upon ſuch freſh Suit or Hue and Cry; or that any ſuſpected perſon ſhall be arreſted by the Conſtables or Townſmen upon their Watches by day or by night, and that ſuch perſons ſhall be delivered to the Sheriff, he then ought to inroll the ſame (F. Coro. 345.) And the Sheriff may receive them without dam-

riage, and shall kæp them safely (and may commit them to the Gaole) untill they shall be acquitted in due manner, scil. until the coming down of the Justices assigned to deliver the Gaol; (otherwise it shall be adjudged an Escape in the Sheriff:) and in the mean time the Sheriff shall inquire of such Arrests, and at the coming of the Justices they must Return such Enquests before the Judges of Gaol delivery, which they have found, and the cause of the taking, with the bodies of such Offendors; but Quæræ whether the Sheriffs shall enquire of such Arrests &c. in their Torne, or where else; for if it be in their Torn, then by the Statute, 1 Ed. 4. cap. 2. they must deliver their Indictments to the Justices of Peace at their Sessions: sæ hic, tit. Torne. Again the Justices of Peace do now usually deal with such Offendors, so as the Sheriffs are not * now troubled with them; either to Inroll, or Commit, or to Enquire of these Offendors, otherwise then in the Sheriffs Torne, as it seemeth. * Nota.

Also by the Statute of Winchester, cap. 6. Sheriffs are commanded to follow the Hue and Cry with the Country, and to kæp Horses, and Armour so to do, quod nota.

Note further, that by this Statute of Winchester, cap. 1. It was commanded that Cryes should be solemnly made in all Counties, Hundreds, Markets, and Fairs, &c. The meaning whereof was, that Proclamation should be made in all Counties, and in all places where great Assemblies of People should be, to warn them of this Statute of Winchester, and of the peyns therein contained, so as none might excuse themselves of ignorance, &c. But by the Letter of this Statute Proclamation was appointed to be made but once, which was executed presently after the making of this Statute; so that by force of this statute, no such Proclamation is to be made at this day. But for that this statute is one of the most beneficial that ever was made for the suppressing of Robberies and Felonies; therefore by another statute made not long after, scil. 28 Ed. 1. cap. 17. It was Ordained that the said statute of Winchester should be sent again into every County to be read and published four times in the year, &c. Afterwards, for that these Malefactors and mischiefs did still more and more increase, King Richard the second sent the same statute of Winchester again to be proclaimed in every County: And besides, by a statute made in the 7. year of his Reign (being now still in force) he further Ordained, that every Sheriff of England should in person four times in the year, proclaim the statute of Winchester in every Hundred of his County, and in every Market Town, by his Bailiffs, as well within Liberties, as without: and this statute of 7 R. 2. doth further Recite and confirm the said statute of Winchester in all points: Quære for the use. 7 R 2. c. 6.

But what the Sheriffs stand bound to do by this last Article of their Oath concerning Vagabonds: (Or by their Office, by vertue of any statute now in force) save only to Arrest and Commit them as suspected persons. Sæ hic cap. 4. Quære, Considering that by the statute of 39 Eliz. cap. 4. All former statutes made for the punishing of Vagabonds, are now repealed: And by that statute of Repeal (not by any other since) Sheriffs have no Authority, or any thing now to do concerning them.

Be-

Before whom the Sheriff ſhall take his Oaths.

THe Highſheriff ought to take theſe Oaths (to the Supremacy, and for the due execution of his Office) before one of the Judges of the Aſſizes of that ſhire whereof he is Sheriff, or before one of the
Wilk. 4. Maſters of the Chancery; and this would be done (ſcil. theſe Oaths would be taken by the Sheriff) ſo ſoon as his Patents be made (if the Sheriff be then in London,) for until he be ſworn he may not intermeddle, nor take upon him to uſe or exerciſe his ſaid Office: or elſe the Lord Chancellor or Lord Keeper of the Great Seal of England may make and direct a ſpecial Commiſſion (viz. a Writ of Dedimus poteſtatem) under the Great Seal of England to any two Juſtices of Peace of the ſame County, whereof one muſt be of the Quorum, giving them Authority thereby to tender and miniſter the ſaid Oaths to the new Sheriff in the Country, and this now is uſuall.

And yet it ſeemeth ſuch a Dedimus poteſtatem may be directed to any other perſon or perſons: See Dy. 168. Bronkers Caſe, where a Dedimus (for this purpoſe) was directed to one Hide only; and ſo it is uſed in all the Shires of Wales, as may appear by the Statute made Anno 34. Hen. 8. cap. 26.

This Dedimus poteſtatem they may have from the Clerk of the Chancery which made the Patents.

But ſuch Commiſſioners to whom ſuch a Dedimus poteſtatem ſhall be directed to take theſe Oaths, muſt certifie the ſame into the Chancery, at ſuch day as the Writ commandeth them.

And the Certificate or Return of ſuch Dedimus poteſtatem may be in this ſort following.

The Return of a Dedimus poteſtatem, *to take the Oath of a Sheriff.*

VIrtute iſtius brevis nobis directi (tali die, & Anno &c. infraſcript') recepimus Sacrament' infranominat' *A. B.* vicecom. Cantabr. de officio ille bene & fideliter faciend. juxta formam cujuſdam ſchedulæ, præſentibus annex' prout interius nobis præcipitur ac prout breve iſtud in ſe exigit & requirit.

F. B. } *Commiſſion'*
& }
M. D. }

Executio iſtius brevis (or Commiſſionis) patet in quadam Schedula huic brevi annexa. *Aliter.*

Nos *F. B.* & *M. D.* in Cancellariam Domini Regis certificamus, nos virtute brevis Domini Regis huic ſchedulæ annexat', quarto die menſis Decembr. Anno regni dicti domini noſtri *Caroli* Dei gratia Regis *Angliæ* &c. apud *C.* in Comitat' Cantabr. recepiſſe Sacrament' *A. B.* militis (in breve prædict' nominat') tam de officio vicecom. in dicto com. Cantabr. bene & fideliter faciend. juxta formam ſchedulæ, brevi prædict' annexæ, *Schedula.*

quam

quam Sacramentum ſpecificat' in actu Parliamenti Anno regni domin' *Elizabethæ*, nup. Reginæ Angliæ &c. primo fact' ſecundum tenorem brevis & ſchedulæ brevi predict' ſimilit' annex', & in omnibus prout in prædict' brevi præcipitur.

F. B.
&
M. D.

So theſe Oaths of the High Sheriff may be taken before one of the Maſters of the Chancery (without any Dedimus poteſtatem:) For a Maſter of the Chancery may ex officio (as it ſeemeth) take any Oath which is Returnable into the Chancery. As (in common experience) if a Bill be put into the Chancery againſt I. S. he may either have a Dedimus poteſtatem, directed to any perſon to take his anſwer in the Countrey: or elſe he may go before any Maſter of the Chancery, who, ex officio, may, and uſually do take the Defendants anſwer, and Return the ſame, &c.

I have alſo known a Maſter of the Chancery take theſe Oaths of the Sheriff; and then the Return thereof may be made as followeth.

Cantab. Ego Joh. Eden Magiſtr. Cancellar. in Cancellar. Domini Regis certifico, me die Novembr. Anno regni Domini Regis Caroli, Dei gratia Angliæ, Scotiæ, Franc. & Hiberniæ, 12i apud Newmarket in Com. Cantabr. recipiſſe Sacrament. Joh. C. Baronet. vicecom. Com. præd. Tam de officio vicecom. in dicto Comit. Sane & fideliter faciend. Quam Sacram. ſpecificat. in actu Parliamenti Anno regni Dom. Elizab. nup. Reginæ, Angliæ, &c. Primo fact. In cujus rei teſtim. huic preſenti certific. Sigillum meum appoſui. Datum &c. apud Newmarket, Die & Anno ſupradict.

I. E.

And if ſuch Commiſſioners ſhall return the Commiſſion (or Writ) and the Oaths to be taken, when they were not taken, this is finable in the Star Chamber Dyer 168.

Anno 1. Eliz. Bronker Sheriff of Wilt. was ſued for perjury in the Star Chamber (by information at the Queens ſuit) for a falſe return by him made of Sir John Thinne to be Knight of the Parliament for the ſaid County, whereas in truth one Penruddoke was choſen by the greater number of Freeholders in the ſaid County (in deceipt of the Country, and whole Realm) and it did appear upon examinations taken, that (the Sheriff) Bronker was never ſworn to execute his Office, although there were a Dedimus poteſtatem directed to one Hide to give Bronker his Oath, but Hide had diſſwaded him from taking his Oath in regard of the difficulty of the Articles or matters therein contained; and this matter by grave reſolution and in the honourable and great aſſembly of the Star Chamber was decreed againſt Bronker in manner following, that is to ſay, firſt for the contempt of the ancient Law (ſc. that every Sheriff was to take ſuch an Oath, in incepto officii, in the beginning of his office, or before he ſhould execute his office) Bronker was adjudged to pay for his fine to the Queen an hundred pounds, beſides the impriſonment of five weeks: and alſo he was adjudged to pay another hundred pounds to the Queen accor- Dyer 167.

ing

ing to the ſtatute for his falſe return and to be impriſoned for one year without bail; and Hide was fined at twenty Marks beſides impriſonment: And alſo Bronker and Penruddoke were bound by Recogniſance, to ſtand to the Arbitrement of four of the Noble men for the hundred pounds due to Penruddoke.

So if the Sheriff ſhall exerciſe, uſe, ſupply, or occupy, his ſaid Office, before he hath taken both theſe oaths (ſc. to the ſupremacy, and concerning his Office) he is finable in the Star Chamber, Dyer 168.

Alſo if the Sheriff ſhall not perform his Oath concerning his Office in every behalf, he ſhall not only be in danger of perjury, but alſo to be fined &c. in the Star Chamber, ſee Dyer 61. & 168.

Yet ſee Co. 11. 98. That a man ſhall not be charged in any Court Judicial, for the breach of a general Oath, which he taketh when he is made an Officer or Miniſter.

There is a third Oath tending to the declaration of that duty, loyalty and obedience, which every well affected ſubject, by the Law of God, and bond of allegiance, ought to bear to his ſoveraign, which Oath is by force of the ſtatute 3 Jacobi Regis cap. 4. And is to be taken by all Sheriffs (and other Officers and Miniſters of Juſtice) whenſoever it ſhall be lawfully tendered to them; and this is to be taken (by the Sheriff) before one of the chief Juſtices (of the Kings Bench or Common pleas) or before one of the Juſtices of Aſſiſe of the ſame County, whereof he is Sheriff, or before ſuch other perſon as the Lord Chancellor or Keeper of the great Seal ſhall thereto authoriſe, by Commiſſion or Writ of Dedimus poteſtatem. *The oath of Allegiance.*

7 Jac. c. 6.

The form of the Oath of Allegiance you may ſee at large, in the ſtat. 3 Jac. c. 4.

4. After that the Sheriff hath taken the ſaid oaths to the ſupremacy, and for the due execution of his Office, then upon the Writ of diſcharge delivered to (his predeceſſor) the old Sheriff, (or at or before the firſt County Court to be kept by the new Sheriff) the new Sheriff muſt take over from the old Sheriff, all his priſoners, (which are in the Gaol by their names,) and all his Writs, precilely, by view and by Indenture to be made between the old Sheriff and the new Sheriff; in which Indenture all the cauſes which the old Sheriff hath againſt every priſoner, muſt be ſet forth and delivered, at the peril of the old Sheriff, or elſe the new Sheriff needs not to take any notice of any thing that is omitted and left out of the Indenture; for he is not chargeable with it, but the old Sheriff, as it appeareth in Weſtbies caſe (Co. 3. fol. 72.) againſt the Sheriffs of London where the caſe was this: one Buſton was ſeverally in execution under the cuſtody of (Skinner and Catcher) the Sheriffs of London, as well at the ſuit of one Dighton, as at the ſuit of Weſtbie the plaintiff, and the ſaid Skinner and Catcher the defendants, at the end of their year, delibered over the body of Buſton (amongſt other priſoners) to the new Sheriffs by Indenture, in which Indenture the execution at the ſuit of Dighton was mentioned, but the execution at the ſuit of Weſtbie the plaintiff was omitted, and after Buſton eſcaped, and it was adjudged that *He muſt take by Indenture the priſoners and writs.*

Crom. 203. Co. 4. 72. 2.

Co. 3. 72.

Eſcape. that the old Sheriffs (Skinner, and Catcher) ſhould be charged with this eſcape; for when the body of Buſton was delivered to the new Sheriffs as in execution at the ſuit of Dighton only, Buſton was thereby out of cuſtody of the new Sheriffs for the execution of Weſtbie, for that the priſoner was not delibered to the new Sheriffs (nor they charged with him) for the execution of Weſtbie, the plaintiff; and although Buſton were ſtill within the Gaole (at the ſuit of Dighton) yet this was adjudged an eſcape, in Law, as to Weſtbie, for that Weſtbie (in whom there was no default) ought not to be without remedy in this caſe.

Alſo in this former caſe of Weſtbies, it was reſolved, that untill the priſoners be delibered to the new Sheriff, they remain in the cuſtody of the old Sheriff, notwithſtanding the new Letters Patents made to the new Sheriff, and the writ of diſcharge, and the writ of delibery directed to the old Sheriff. Yet ſee hic infra, that the old Sheriff is puniſhable for detainour of his priſoners, after his writ of diſcharge delibered to him. Co. 3. 72. Vide Dyer 335.

Alſo it was there reſolved that the old Sheriff ought to give notice to the new Sheriff of all and every the executions, which are againſt

Notice. any priſoner in their cuſtody, although the executions be of Record; and that the new Sheriff is not to take notice of them at his perill, but ſhall be charged only with ſuch whereof the old Sheriff gives to the new Sheriff notice.

If the old Sheriff ſhall give notice to the new Sheriff, of the executions which are againſt any priſoner by word only, or by ſome note in writing under the old Sheriffs hand, or under the hand of his Undertheriff, and not by Indenture, and the new Sheriff be content to accept of ſuch notice, it ſeemeth ſufficient, for volenti non fit injuria; And yet the new Sheriff may compell the old Sheriff to make ſuch delibery by Indenture; and ſo run all the Writs, de Brevibus & Rotulis liberandis, in the Regiſter, ſee hic fol. Co. 3. 72. Regiſt. 295.

The Sheriff hath one in execution for debt, in another mans houſe (and not in the Gaole) and the new Sheriff will not receive the priſoner at that houſe, but in the Gaol, and after the old Sheriff hath a Writ of diſcharge delibered to him, there the priſoner is preſently is out of execution, and this is an eſcape in the old Sheriff, and if he ſhall detain him after that he hath his Writ of diſcharge, the priſoner may have his action of falſe impriſonment againſt the old Sheriff. Cromp. 204.

And ſo note that the new Sheriff is not bound to receive the priſoners from the old Sheriff but only at the Gaol, and in no other place; And yet if the old Sheriff ſhall deliver his priſoners to his Succeſſor when he is choſen, who receiveth the priſoners out of the Gaol, the old Sheriff ſhall be diſcharged by this delibery. See 11 R. 2. fitz. Atturney 61. where the old Sheriff had taken one upon a Capias utlagatum, and had delibered him to his Succeſſor when he was choſen, (who reſeived him, and was poſſeſſed of his body) but he had not the body at the day, &c. And here the old Sheriff was diſcharged. Cromp. 214. Crom. 214.

But

But it was in Westbies case resolved, that if a Sheriff hath in his custody divers persons in execution, and dieth in the time of his office, and after a new Sheriff is made, here the new Sheriff at his perill ought to take notice of all the executions which are against any person which he finds in the Gaol: but this is by reason of the necessity, for that there is no person to make delivery to him of them, or to give him notice, and besides the new Sheriff may take notice himself of all executions, they being upon record.

Also in the former case the Sheriff (it seemeth) is to take notice of all other prisoners in the Gaol, and of the causes of their commitment; and so the new Sheriff (upon the death of the old Sheriff during the time of his office) is chargeable without either delivery of the Prisoners, or notice of the causes of their commitment.

And so it seemeth for the delivery of the Writs, upon the death of the old Sheriff during the time of his office, the new Sheriff is to take notice of all other Writs, (and of the contents thereof) which shall be in the hands of his Predecessor, or of his Undersheriff.

Also in the afore recited case, it was resolved, that if a Sheriff die in the time of his office, and before that another is made Sheriff, there if a prisoner who is in execution shall break the Gaol and escape and go his way, yet this is no escape, for that by the death of the Sheriff, all his prisoners were in the custody of the Law, untill a new Sheriff be made; and the prisoner may be taken again in execution at any time after, wheresoever he shall be found. *Escape.*

But if such prisoners shall be in the Gaol at such time as the new Sheriff is made, there the new Sheriff (so soon as he is appointed by the King, or at least so soon as he hath received his Patent) seemeth to be chargeable presently with them, without any delivery, or notice, made or given to him, of the said prisoners, or of the causes of their commitment; and if such prisoners shall after get out of the Gaol, this is an escape; yet if it be without the consent of the new Sheriff or his Gaoler, then he also may be taken again at any time after. See hic postea, cap. 29.

Note also, that by the death or Resignation of the King, the authority of the Sheriff (and of all his officers) doth determine and cease, Co. 7. 30. Dyer 165. And therefore it is used presently (in the next Kings time) to sue out new Patents of this office, and of assistance. Br. Office 25. Co. 7. 30. But if in the interim between the death or Resignation of the King, and the time that the Sheriff shall sue out his new Patent, a prisoner shall break the Gaol and escape, yet it seemeth that the Sheriff is chargeable for this escape; for he having the prisoner once in his Gaol, although by the death or Resignation of the King, the Sheriff can execute no Process, &c. untill he hath sued out his new Patent, yet he is safely to keep all the Kings rights of the Crown which shall then be in his custody, and so all prisoners; and as he may justifie the detaining and keeping of all prisoners committed to him before, and then in his custody, so he may, nay ought at his peril to make his Gaol safe, so that his prisoners escape not.

The form of an Indenture for ſetting over of priſoners, and Writs between two Sheriffs.

THis Indenture made, &c. Between *R. S.* Eſquire late Sheriff of the County of *Cambridge* of the one part, and *A. B.* Knight, now Sheriff of the ſaid County on the other part witneſſeth, that the ſaid *R. S.* by vertue of his Majeſties Writ of diſcharge (of his late office) to him directed, hath delivered and ſet over unto the ſaid *A. B.* theſe Writs following, that is to ſay, A *Capias verſus W. F. retorn. Octab. Hillarii ad ſectam Johannis Smith &c.* Together with the bodies of *Jo. N.* in execution at the ſuit of *G. H.* for a debt of twenty and two pounds, and *J. H.* at the ſuit of *C. D.* in execution for ten pounds, and *R. G.* in execution as well at the ſuit of *Jo. Dighton* for a debt of one hundred pound, as alſo at the ſuit of *N. Weſt* for a debt of forty pound, &c. In witneſs whereof, &c.

All the Writs which are ſet over in the Indenture betwæn the Sheriffs, if they have bæn executed by the old Sheriff, then they muſt be returned by him or in his name; and indorſed, or ſubſcribed under by the new Sheriff thus:

Iſtud Breve prout indorſatur mihi deliberatum fuit per *R. S.* Armiger. nuper vic' prox' prædeceſſor. meum in exit' ab officio ſuo.

A. B. miles Vicecom.

If the Writ of diſcharge of the old Sheriff be brought into the County and delivered to the Clerk of the County (or Underſheriff) ſitting in the County Court in the abſence of the High Sheriff, Quære **whether the old Sheriff be thereby diſcharged of his Office** ipſo facto, **or not: it ſæmed to** Manwood **and** Dyer, **that the high Sheriffs Authority ceaſed by ſuch publike delivery of the Writ of diſcharge in the County Court, where every man is bound by Law to take notice; but yet if by ſuch delivery of the Writ the old Sheriff be diſcharged, then there ſhall be an eſcape in the old Sheriff of his priſoners, againſt his will, for the old Sheriff by intendment was ready to deliver them,** &c. Ideo quære Cromp. 203. Dyer 355.

Alſo by the words of the Statute of 12 Edw. 4. cap. 1. **it ſæmeth that the old Sheriff may execute his office, untill his Writ of diſcharge be delivered to him: ſæ alſo the Statute of** 17 Edw. 6. hic poſtea, cap. 3.

Apres ſon diſcharge ſon act void.

But if the old Sheriff after he is diſcharged, &c. **ſhall make his Warrant or precept to any of his (late) Bayliffs, or Officers to Arreſt another, and the Officer by force thereof ſhall Arreſt the party, an action of falſe impriſonment will lie againſt both the Sheriff and Officer for ſuch an Arreſt.** Cromp. 205.

Dyer 41.

The old Sheriff Returned the Proclamation upon an Exigent, **after that he was diſcharged of his Office, and by the Judgement of the Court the outlary was void, and the party was diſcharged.**

What

What Retorn or other act, the old Sheriff may do, after that the new Sheriff is choſen.

A Habeas Corpus was delibered to the Sheriff of N. before the day of the Retorn, whereof the new Sheriff took the Office upon him, and the old Sheriff having before ſerved the Writ, brought it into the Court, and there ſhewed that the new Sheriff would have embezelled the Writ to have cauſed the old Sheriff to have bæn amerced: whereupon the new Sheriff was called, and the Writ ſo ſerved was delibered to him in Court, and a ſpecial entry thereof made in diſcharge of the old Sheriff, &c. 22 E. 4. f. Retorn 33. But now all Writs are by view and by Indenture preciſely to be ſet over by the old Sheriff to the new. Ut patet hic antea.

If the Retorn of the old Sheriff happen to be Erronious, and that a new Sheriff be choſen, yet the Court may cauſe the old Sheriff, or his Undersheriff, Clerk, or Deputy, to amend the ſame, 33 H. 6. f. Amendment 40. ſee hic c. 41.

I have ſæn a Report of a caſe adjudged in Anno 44 Eliz. Rot. 308. betwæn Ayer and Aden, M. Ayer being poſſeſſed of certain Dade, and Judgement giben againſt him at the ſuit of one Hopper, who had ſued a Fieri fac. againſt Ayer, by vertue whereof the Sheriff ſeiſed the Dade, and paid parcell of the money recobered but retorned not the Writ; and then the Sheriff was removed and another Sheriff choſen; and after the Writ of diſcharge directed and delibered to the old Sheriff, he ſold the Dade to Aden the defendant, who juſtified thereby in an Action of Trober and Converſion; and whether this ſale by the old Sheriff after he was removed ſhould alter the property, was the queſtion: and it was adjudged that the old Sheriff might ſell the Dade although he were out of his Office, for that he was chargeable to the party Plaintiff. And they grounded the judgement much upon the book of 32 H. 6. 36. f. Proces 99. where they ſaid that the Writ de Diſtr. imp. vic. gabe him no authority, but was only to compell him to do that which he had power by the Law to do, and thereupon judgement was giben that Ayer the Plaintiff ſhould be barred.

So then the old Sheriff after he is diſcharged, may notwithſtanding ſell any goods formerly extended by him whileſt he was in his Office.

Vic. fiſt Array duem. & deliv. le Panel. (ve le bre.) al Plt. de prendr. Counſel &c. & eſtr. al denomination le Plt. retorne aſcu. antes, le vic. eam aut remove. 3. termes apres diſavow le Retorne eo que fuit altred ut ſup. & tenus que le vic. ne p. diſavow ceo, ſin. meſme le terme que fuit retorne, & nemy apres. Dyer. 182.

5. The Sheriff is to read his Patents and to name his Officers.

The new High Sheriff at the firſt County Court which ſhall happen to be after his Election and the diſcharge of the old Sheriff, muſt read (or cauſe to be read) his Patent and his Writ of aſſiſtance; 5. *He muſt read his Patents.*

And name his Officers.

and muſt alſo nominate his Underſheriff (or County Clerk) and depute, appoint, and proclaim four Deputies (at the leaſt) in that Country to make replevins, for the eaſe of the Country; which Deputies ought to dwell not paſt twelve miles diſtant one from another, in every quarter of the County one, to grant replevins in the Sheriffs name, and to make deliverance of diſtreſſes when need ſhall require: and this appointing of Deputies is by force of the Stat. 1 & 2 Phil. & Mary c. 12. And theſe Deputies ſhall in the Sheriffs name make replevins, as the Sheriff himſelf may do. 1 & 2 P. & M.

And the Sheriff for every moneth that he ſhall lack ſuch Deputies ſhall forfeit five pounds, &c. And yet ſuch Deputies, the Sheriff may appoint at any time within two moneths next after he hath received his Patent.

Good advice to keep his Office in his houſe.

But rather then the High Sheriffs (being Gentlemen of worth) ſhould hazzard their oaths, or credit in their Country, they had better (in regard thereof, and for their better diſcharge of their duties both to God, and to their Prince in the execution of their Office) to keep their Office, and their Underſheriff in their houſes, ſo as they may take a continual ſurvey themſelves, as well of their Office, as of their Underſheriff, and other Officers, rather than to truſt their Officers, eſpecially their Underſheriff, being a ſtranger, with the whole execution of their office, and upon bond and covenants, which by the ſtatute of 23 Hen. 6. c. 10. are thought by many opinions to be void, or voidable at leaſt, (but ſee more concerning ſuch bonds, &c. hic poſtea, cap. 96, 97.) And if thoſe bonds prove not good, then a lewd, or an ignorant Underſheriff may hazzard the undoing of his High Sheriff.

And therefore if the High Sheriff will ſleep quietly, and take his repoſe in ſafety (whether he ſhall keep his Office and his Underſheriff in his houſe, or no) he ſhall do well and wiſely to look for, and to take good ſecurity from his Underſheriff, before he do truſt him with his Office; which ſecurity is commonly by bonds and covenants taken by the High Sheriff, of the Underſheriff and his friends; the form of ſuch bonds and covenants, ſee hic poſtea, cap. 96, 97.

6. The Sheriff ought to have a Deputy or Atturney in every of the Courts at Weſtminſter, &c.

6. He muſt have Deputies at Weſtminſter.

Alſo the new Sheriff before he ſhall return any Writ into the Chancery, the Kings Bench, the Court of Common Pleas, or the Exchequer, ought to make and have an Attorney, or Deputy of Record, in every one of thoſe Courts of Record, there to receive all manner of Writs and Warrants to be delivered to them, viz. all ſuch Writs and Warrants as ſhall be directed to the Sheriff for whom ſuch Deputy is appointed; and if any Sheriff ſhall do to the contrary, he ſhall forfeit forty pound (to the King and Informer) for every ſuch default, and treble damages to the party grieved or endamaged: and this making of Deputies is by force of the Stat. of 23 H. 6. c. 10. 23 H. 6. c. 10.

And it ſeemeth ſuch Deputies muſt be made by Warrant of Atturney from the High Sheriff: And yet the Sheriff may make his

his Deputy without writing, by the opinion of Brudnell 21 H. 7. Fol. 37. a.

But Sir Edward Coke lib. 9. fol. 51. sheweth that it was resolved by the Judges, that he which maketh a Deputy, must make him by writing.

And these Deputies must give their attendance in convenient and due manner, in, and upon all and every of the said Courts.

P. Exigt. 7. Also every Sheriff of every of the twelve Counties of Wales, and of the Counties Palatine of Lancaster, Chester, and the City of Chester, shall have in every of the Courts of the Kings Bench, and Common Pleas, one sufficient Deputy at the least, to receive all Writs directed to such Sheriff, for whom the same Deputy or Deputies shall be appointed, in like manner and form, and upon like pains as by the Laws and Statutes of this Realm other Sheriffs of other Shires within this Realm of England be bound to have in either of the same Courts: And all Writs of Proclamation shall be delivered unto every such Deputy of Record in the same Courts: And also like fees shall be paid for making every such Writ of Proclamation, and for the inrolling of the Record, as is limited in the Statutes of 6 H. 8. 1 E. 6. 10. 5 E. 6. 26. 23 H. 6. 10. *Wales and Counties Palatine.*

Les vic. de Chester & Lancaster, & Counties Palatine, doient. mitt ejus lour warrant. de attorny in le Court del Common Bank, & doient estre attendant. la. Et ceo Court direct Proces al Chamberlain de Chester immediatem. & il doit escrier al vic. Et si le vic. la levy argent s' execution & ne retorne ascun chose al Chamberlain, per que le Chamberlain retorne a ceo Court Mandavi vic. qui mihi nullum dedit responsum, sur suggestion fait in ceo Court que le vic. ad levy le argent, il. ambid. vid. le Chamberlain, & le vic. vera jour done destre in Banco, la dee examin sur ceo. per Nelson Pregnatory, Anno 29 Eliz.

CAP. 3.

FOr that in former times the Sheriffs in divers Counties of England, having their Offices, some for term of years of the Kings grant, and others trusting of longer continuance in their said Offices, were greatly encouraged, and did take upon them to do many and divers oppressions to the Kings people, and evil service to the King: Therefore it was ordained and established by divers Acts of Parliament as followeth.

14 E. 3. c. 7. 28 E. 3. 7. * 42 E. 3. 9. 23 H. 6. 8. * Pardon to such offenders, granted 28 Hen. 6. c. 3. & 8 E. 4. c. 4. by Act of Parliament.

First, That no Sheriff, * Undersheriff, nor Sheriffs Clerk, shall tarry or abide in his Office (or shall occupy the said Office) above one year, upon pain to forfeit two hundred pounds yearly as long as he occupieth the Office: And every * pardon made for such offence or forfeiture shall be void; and all Letters Patents made to occupy such office above one year shall be void, any words or clause of non obstante put into such Patent notwithstanding. And whosoever shall presume to take upon him to occupy the office of a Sheriff above one year, by force of such Letters Patents, shall be disabled for ever after *Not above one year.*

after to be Sheriff within any County of England: And every man which will, may ſue for the ſaid ſumm of two hundred pounds ſo forfeited againſt ſuch Sheriff, Underſheriff, or Sheriffs Clerk, in any action of debt in his own name, and the King ſhall have the moiety of all that which is recovered, and he that ſueth ſhall have the other moiety, 23 H.6.c.8. & 6 H.8.c.18.

And yet the King by his Prerogative may diſpenſe with theſe Statutes, and may grant the office of a Sheriff for years, life, or in fée; ſée 2 H.7.f.6.Br.patents,109. Co.7.14.& Co. 9. 97. Br. prerog. 37. & Fitz. Grt. 33. & Plo. 502. b. & Sir Fr. Bacon, page 75. ſaith that it is an inſeparable Prerogative of the Crown to diſpenſe with politick Statutes, &c.

Alſo perſons inheritable to the office of Sheriff, and Underſheriff, and other Officers in London and Briſtow, are excepted out of theſe ſtatutes. Sée hic poſtea. 6 H.8.c.18.

But for that the High Sheriffs being choſen yearly the morrow after All Souls, divers of them ſometimes have not their Patents, nor take their Oaths a long time after; Therefore it was enacted by other Statutes (made in the time of Edw.4.) that every old Sheriff of every County ſhall have full power, and may occupy his office (ſc. may execute and return any Writ, Precept, or Warrant, from or out of any the Kings Courts of Record at Weſtminſter delivered to him) as alſo to do and execute every other thing to his office of a Sheriff appertaining, during the Terms of Saint Michael, and Hilary, (after the year that their office is ended) unleſs before the ſame time he be lawfully diſcharged, ſc. unleſs he hath a Writ of diſcharge delivered him of his office Sheriffwick: And they ſhall not be thereof damnified by force of the aforeſaid ſtatute of 23 H.6. c.8. 12 E.4. c.1. 17 E.4.c.6. Cromp.208.b.

Not within three years.

Alſo it is ordained that no man which hath béen Sheriff (or Underſheriff) of any Countie by one whole year, ſhall be choſen Sheriff (or Underſheriff) of that County again within three years next enſuing, (except there been none other ſufficient of poſſeſſions and goods to anſwer the King and his people within the ſaid County,) upon pain of forfeiture of two hundred pounds by him that ſhall occupy his office contrary to the effect and intent of any of the ſtatutes afore recited. 1 R.2 c.11. 23 H.6.c.8.

But the Sheriffs and Underſheriffs within the City of London, and of ſuch Counties in which they be inheritable to the office of Sheriff, béen excepted out of theſe former ſtatutes. 23 H.6.c.8.

Muſt be reſident.

Every Sheriff ſhall dwell and continue in his own perſon within his Bailywick or County, for and during the time he ſhall be Sheriff, (except he be otherwiſe licenſed by the King) and this the Sheriff is bound to do as well by his oath, as by the ſtatute of 4 H.4.c.5.

And yet if the Sheriff being out of his County ſhall make a pannel, or make any return, &c. it is good. Sée 9 H.4. f.1.

But if the Sheriff be beyond the ſea (ſcz. at Calice, or elſewhere) and maketh a pannel, or any return there, and ſends it into 9 H.4. 1. Br. Officer 7.

into England, that is not good, for that he is no Officer but onely in England.

Plo. 37. Note, That a Sheriff of one County hath no Authority or power within another County; neither may any other Authority or Officer within this Realm, exceed their limits and bounds: And yet if the Sheriff by force of the Kings Writ, shall be commanded to carry his prisoner out of his County, &c. And thereupon shall carry or send by Baston, his Prisoner to the place appointed him, although he shall convey him through divers other Counties, yet the prisoner shall be said to be in the custody of the first Sheriff, in every of those Counties, and so to such a special intent, the Sheriff shall have Authority in another County.

Ibid. So if a prisoner of his own wrong shall make an escape, and flie into another County, the Sheriff or his officers upon fresh suit may take him again in another County, &c. See hic postea.

Must not let his office.

No Sheriff shall allign, grant, or let to Farm his office in any manner, nor his County, nor any of his Bayliffwicks, Hundreds, nor * Wapentakes: (nor any of his Courts, as it seemeth) nor any part thereof. And this the Sheriff is restrained to do as well by his Oath, as by Statute, upon pain to forfeit fourty pound: See the Statutes 9 Ed.2. Lincoln, *de Vicecomit.* 2 E.3. ca.12. 4 E. 3. ca. 15. 14 E. 3. c. 9. 4 H.4.c.5. & 23 H.6.c.10. & 6 E.6.cap.16. And the Justices of Assize may enquire thereof, and punish the same. 4 E. 3. c. 15. Abr. d'ass. 136. Or they may be punished in the Star Chamber. And yet the Sheriff may make and appoint under him his Undersheriff, and his Baylyffs, and Deputies, for all these do use their place in the right of the Sheriff, and as the Sheriffs servants: See hic cap. 1. But a Lessee or Farmer occupieth the place, or things demised in his own right. See Fineux 20 H. 7. fol. 12. b. & Dr. & Stud. 136. And therefore the form of the Indentures made at this day, or heretofore made between the High Sheriff and his Undersheriff, are not warrantable by these statutes: for by the former Book, if the Sheriff letteth his County to his Undersheriff, or covenants with him that he shall have the profits of the County, or part thereof, for a certain time, though there be no Rent received, &c. Yet this is against the statute; for the intent of the statute is, that Sheriffs shall keep their Counties (sc. the profits thereof) in their own hands, and every part thereof. Fineux 20 H.7.13.

* Hundreds and Wapentakes be all one. Camb. 159.

Br. Grants 39.

By the Book 21 Hen.7. fol.36. The County is but the profits of the County, and the Issues coming thereby; so that for the Sheriff to let the profits of his County, or of any of his Bayliffwicks, or any part thereof, is forbidden by the former statutes: see B. Grants 59. & 20 H. 7. fol. 12. a,b. 21 H.7. 37. & Plo. 87. a. & 124.

20 H.7.12.b. 13.a.

20 H.7. 12.a. Croke 173.

Now the Revenues or issues and profits of the County pertaining to the Office of a Sheriff, seem to be Fees, Annuities, Rents, Farms, Issues, Fines, Amerciaments, Escheats, Estrays, &c. the Goods of Felons, and Fugitives, and other like Casual profits. But quære whether the Sheriff be but to gather up these, and is to be accountable for these profits to the King; or that he Farmeth these of the King under the name of Micontiels, and payeth Rent for them, 20 H. 7. 12. See hic c. 9.

Note

Note, Where the King maketh one Sheriff, ſine Compoto, there the Sheriff ſhall have the Revenues which belong to his Office to gather to his own uſe, Co. 11. 82. Otherwiſe he ſhall be accomptable for them: But it ſeemeth he is not accomptable for them, ſaving in a groſs ſumm for the Farm of the profits of the County, Keilw. 173. And yet ſee the form of the Sheriffs Oath for paſſing of his Account (hic cap. 125.) by which they ſeem to be accomptable for divers of theſe things particularly.

Now whether a Leaſe made by the Sheriff of his Office or County, &c. only by parol, be contrary to theſe Statutes or no, ſee the Book 20 Hen. 7. fol. 12. & 21 H. 7. fo. 36. pro & contra. But however, ſuch a Leaſe or agreement by parol, ſeemeth neither ſafe for the Sheriff, nor warrantable by his Oath.

Alſo for that this Statute of 23 H. 6. is penal, and every penal Statute ſhall be taken ſtrictly, therefore by ſome opinions, where the Sheriff ſhall let parcel of his County, or parcel of the profits thereof, and ſhall reſerve part of the profits to himſelf, there he is not within the danger of the Statute, except he let the whole: but others hold the contrary, for that otherwiſe he might let parcel to one, and parcel to another, and ſo the Statute ſhould be of little or no effect.

Penall Statutes. And accordingly it is obſerved by the Right Honourable, and late Reverend Judge Sir Edward Coke, in his eleventh Book, fol. 34. That it is frequent in our Law Books, that penal Statutes have been taken by intendment, to the end that they ſhould not be illuſory, but ſhould take effect according to the expreſs intention of the makers of the act, for the advancement of Juſtice, and in ſuppreſſion of crimes and hainous offences.

CAP. 4.

The Authority and power of the High Sheriff.

VIcecomes eſt Regis Officialis qui ad Comitatus gubernationem quotannis conſtituitur. Et partim Judex eſt, ad cauſas ſcilicet minores quæ ejus juriſdictioni ſubſunt: partim Miniſter & Mandatarius Regis. Cow. Sée plus hic cap. 1.

The authority and power of the Sheriff is in ſome Caſes Abſolute or Judicial, and in ſome other Caſes Miniſterial.

And firſt concerning their Abſolute power.

Abſolute or Judicial. No Sheriff ſhall hold Pleas of any thing pertaining to the Kings Crown (by the Statute of Magna Charta, cap. 17.) ſc. they ſhall not hold Plea of any Felony, or Treſpas, vi & armis; nor of any Free-hold, or Land; nor any Plea of any other thing touching the Crown, nor of any thing which is againſt the Peace of our Soveraigne Lord the King, his Crowne or Dignity: which notwithſtanding muſt be underſtood to this purpoſe, ſc. That Sheriffs Magna Charta.

Sheriffs cannot hear and determine the Pleas of the Crown, &c. and no otherwiſe: But in his Tourne, he may enquire of divers things touching the Crown, and of matters againſt the Peace, &c. See hic cap. 107, 108, & 109.

For by the ſame Statute cap. 35. the Sheriffs of every County may hold their Tourne (or Court Leet) in which Court, the Sheriff hath a Judicial power, and therein they may enquire of Treaſons, Homicides, and other Felonies, and common Trelpaſſes, whereof See hic poſtea tit. Sheriffs Torne, & Stat. 52. H. 3. cap. 24. But they ſhall take no Indictments (by Commiſſion procured at their own Suit) but only in their Tournes, Stat. 28. Ed. 3. cap. 9.

Appeals of Robbery, or other Felonies, and of Mayhem, and Rape, may by Bill, be ſued in the County Court, at this day, as it ſeemeth. See hic cap. 111.

By the ancient Common Law (before the making of the Statute of Magna Charta) the Sheriff, and Coroners were Judges, and in their Tourne, Sheriffs, and in the County Court, the Sheriff and Coroners together, did hold Plea of Felonies, and other things pertaining to the Crown. See Abr. d'Aſſ. fol. 68. Finch. 115. 125. & Stamf. 55. 64. plus hic, cap. 111.

The Sheriff alſo at this day, may hold Plea of Lands in his County Court by a Juſticies, but otherwiſe he cannot. See hic tit. County Court.

The Sheriff by Plaint alſo may hold Plea without any Writ in his County Court, de averiis, Captis & Detentis, &c. Which Plea properly belongeth to the Crown. See hic poſtea, cap. 3. & 114.

See more hic tit. Sheriffs Tourn, how Sheriffs may there Impriſon, Fine, Bind over, and otherwiſe puniſh Offendors. And this Office of a Sheriff one calleth it Judiciaria Dignitas, Co. L. 168.

Alſo the Sheriff in his County Court may take a Recognizance, between party and party, &c. See hic tit. County Courts.

And by the antient Laws of this Realm, the Sheriff might let to Mainprize by Recognizance, ſuch as were in priſon for the Peace.

By an old Statute, he which hath a Pardon for any manner of Felony, muſt within three moneths, next after the making of the ſame pardon, come before the Sheriff and the Coroners of the County where the Felony was done, and ſhall finde ſir good and ſufficient Mainpernors (or Sureties) for whom the ſaid Sheriff and Coroners will anſwer, that he from thenceforth ſhall bear himſelf well and Lawfully (or be of good behaviour) And the Mainprizes ſhall be Sealed and Returned (by the Sheriff and Coroners) into the Chancery within three Weeks after the end of the ſaid three moneths; otherwiſe ſuch pardon ſhall be void, Stat. 10. E. 3. cap. 3. vide 3. H. 7. fol. 7. a. Br. Cor. 134. *Qu. Dl. uſe a ceo jour.*

Co. L. 168. Again every Sheriff is by the Common Laws a principal and ſpecial *To keep the Peace.*

cial Conſervator of the peace in every place within his County, and hath committed unto him the cuſtody of his County for the time that he is Sheriff, and is to ſee the peace thereof kept and maintained; And upon requeſt to him made he may command and cauſe another to find ſureties for the peace, and may take the ſame ſurety by Recogniſance (to the uſe of the King) and that ex officio, Fitz. 81. d. Yea all obligations that he takes for the preſerving of the peace, or to that end, are as Recogniſances in Law, *Termes del ley*, tit. Vic'. Kitch. Retorne. 44.

Again the authority of the Sheriff is by commiſſion of Record, by which the King commits to him Cuſtodiam Comitatus (and ſo the keeping of the peace, and Adminiſtration of Juſtice is committed to him, as is here before ſhewed, &c.) And all Commiſſioners who have authority to keep the peace, or to ſit or deal in matters of Juſtice for the Common-wealth, may take Recogniſances. Vide Br. Recog. 5. & 18.

Upon a ſpecial ſuppliçavit directed to the Sheriff, he may take a Recogniſance by the opinion of Dauby. 9. E. 4. 31. and Mr. Broke abridging the caſe, giveth this reaſon thereof, for that the ſupplicavit is a commiſſion to the Sheriff, and Commiſſioners may take Recogniſance. Br. Recog. 5.

Such perſons as ſhall be apprehended upon ſuſpicion of felony, either by the Country upon freſh ſuit, or hue and cry, or by watchmen, and ſhall be delivered to the Sheriff, he may commit them to the Gaol, &c. hic capt.

Yea the Sheriff may apprehend, arreſt, and commit to priſon all Affrayors, and all ſuch as within his juriſdiction (ſc. within his County) and in his preſence, ſhall in any ſort break, or attempt to break the Kings Peace: and may command the aid and force of others, to arreſt ſuch offendors, and may cauſe them to find ſureties for the Peace.

Alſo if one ſhall threaten me of life, or member, and that I ſhall complain to the Sheriff thereof, the Sheriff may cauſe him to find ſureties for the peace, and may ſet him in the ſtocks, quouſque he ſhall find ſureties, &c. 44. E. 3. F. Barr. 202. 12. H. 7. 17.

So if the Sheriff ſhall ſee one aſſault another, &c.

So if any man ſhall make an aſſault upon the Sheriff himſelf. See 5. H. 7. 6.

Alſo when any of the Kings enemies ſhall come into the land, the Sheriff in defence of the Realm, may command all the people of his County to attend him; and he and they are to attend the King to defend the land.

And when any rebellion, inſurrection, or riotous aſſembly of people ſhall be within the land, the Sheriff may raiſe the power of his County to apprehend ſuch malefactors. See hic poſtea.

But

1.M.ca.8. But yet a Sheriff ought not (in other things) to execute the office of a Juſtice of Peace in the ſame County where he is Sheriff during the time that he is Sheriff: and all and every acts to be done by any Sheriff by authority of any commiſſion of the peace during the time of his Sheriffwick ſhall be void and of none effect; but and if he be put into the commiſſion of the peace before he be Sheriff, and then he is choſen Sheriff, and that commiſſion of the peace continueth after that he is diſcharged of his office of a Sheriff, Quære if he may not then ſit or execute the office of a Juſtice of Peace by force of that commiſſion without taking a new oath: It ſeemeth he may; for firſt by the ſtatute of 1. Ed. 6, 7. it was ordained and enacted in theſe words following, ſc. That albeit any perſon or perſons being Juſtice of Peace, &c. ſhall fortune to be made Sheriff, that yet notwithſtanding he and they ſhould remain Juſtice and Commiſſioner, and have full power and authority to execute the ſame in like manner and form as he or they might and ought to have done before the ſame ſtatute.

Camb.207.

1.Ed.6.

After the making of which Act, divers perſons being in the commiſſion of the peace were alſo made Sheriffs of the ſame County, and did exerciſe either of the ſaid offices, which ſeemed not to be convenient, and thereforе it was after enacted by the ſtatute made 1. Mar. cap. 8. That no manner of perſon having, uſing, or exerciſing the office of the Sheriff of any County ſhall uſe or exerciſe the office of the Juſtice of Peace by force of any commiſſion, or otherwiſe, in any County where he or they ſhall be Sheriff during the time only that he or they ſhall uſe or exerciſe the ſaid office of Sheriffwick, any thing in the ſaid former Act (made 1.Ed.6.) notwithſtanding.

1.Mariæ.

So now the making of a Juſtice of Peace to be Sheriff of the ſame County doth not determine the commiſſion of the Peace, for then the authority of all other the Juſtices of the Peace of the ſame County ſhould be thereby determined, but this ſeemeth only to diſable the perſon ſo being Sheriff to meddle as a Juſtice of Peace during ſuch time only that he ſhall be Sheriff of the ſame County; and that the commiſſion of the Peace need neither to be renewed, nor the late Sheriff newly ſworn for the execution of the Office of a Juſtice of Peace, but may again as before execute that Office by vertue of the former commiſſion of the Peace.

But every Sheriff (by the common Laws of this Realm) may do, and is bound to do his beſt endeavour, for the conſervation of the Kings Peace, and may and ought to purſue, apprehend, arreſt, and impriſon all Traitors, Murderers, Robbers, and other Felons, and all ſuch other as do break, or go about to break or diſturbe the Kings Peace within his County (as is before ſhewed) and to that purpoſe the Sheriff may take (of that County where he is Sheriff) any number that he ſhall think meet to aid and aſſiſt him: and every man being required ought to be aiding therein to him, and if any man (being required) ſhall refuſe to aid the Sheriff therein, they ſhall be fined to the King: Br. fines 37. *Arreſt felons, &c.*

3.E.1.c.9. And by the ſtatute of 3. Ed. 1. cap. 9. upon any felony committed, all men generally ſhall be ready at the commandement of the Sheriff (and at the cry of the Country) to purſue and arreſt all felons (when any need is) as well within franchiſes, as without; and they which make default and thereof be attainted, ſhall make a grievous fine to the

King: and it ſeemeth the Sheriff may attache all ſuch perſons making ſuch default, to appear before the Juſtices of Gaol delivery, there to anſwer their ſaid default: Officium Coronat' 3.Ed.1.

And yet a man cannot juſtifie to arreſt another for felony, by the commandement of the Sheriff, for in ſuch caſe every man hath equal power with the Sheriff, and ſo his commandement is not material: And it is not like where the Sheriff hath the Kings Writ or Proces to execute, for there upon the Sheriffs Precept in writing, (and in ſome caſes, upon his command by word only) a man may juſtifie, &c. 5.H.7 4,5.

Alſo the Sheriff may and ought to arreſt (or attach) and take into his cuſtody, ſuch felons ſo apprehended or taken, and ought to impriſon them in the Gaol till the coming of the Judges, or Juſtices of Gaol delivery. 3.E.1.c.9.& 4.E.1. Officium Coronat'.

If a felon taken upon hue and cry, ſhall be delivered to the Sheriff, he is to Inroll the ſame: and upon a preſentment thereof before the Juſtices, if it ſhall be found that the felon is out of the cuſtody of the Sheriff, contrary to Law, it ſhall be adjudged an eſcape in the Sheriff. 3.E.3.Fitz.Coro.345.See hic c.2.

But if the Sheriff (of his own authority) ſhall arreſt any man upon ſuſpition of felony, firſt there muſt be ſome felony committed in deed, and next the Sheriff himſelf muſt have a ſuſpition of him, and for the ſame felony. Liber Intrac. tit. fx, impriſ. div. 5. & 5. Hen.7.fol.4. for the Sheriffs authority therein, is but ſuch as every man hath, ut ſupra.

See more in my Country Juſtice, tit. Forcible Entrie & tit. Arreſt.

Suſpected perſons.

Alſo Sheriffs (ex officio) may arreſt within their County, all perſons by them ſuſpected which be vagrant, or which ſhall walk by night or day, and which are of evil name or fame; and they ſhall commit ſuch offendors to the Gaol, there to remain untill the coming down of the Juſtices aſſigned to deliver the Gaol: 5. E. 3. cap. 14. Cromp.203.

Quære, If the Sheriff may not put ſuch ſuſpected perſons under common mainprize, binding them with two ſufficient ſureties by recognizance to appear before the Juſtices at their next Seſſions or Gaol delivery, and to certifie the ſame recognizance before the ſaid Juſtices accordingly: every Sheriff in Wales may do this by the Statute 34.H. 8.c.26.& 27.H.8.c.26.

Alſo if any other perſon ſhall have any ſuſpition of ſuch night walkers, or other perſons of evil fame, they may arreſt them, or cauſe the Conſtable to arreſt them, who ſhall deliver them to the Sheriff, and the Sheriff ought to receive them, and ſhall enquire of ſuch offendors, and ſhall return their enqueſts before the ſaid Juſtices of Gaol delivery, with that which they have found, and the cauſe of their ſaid arreſts, together with their bodies: and in caſe that the ſaid Sheriff hath not enquired of ſuch arreſts, they ſhall be amerced: See Hic antea cap.2. 5.E.3.c.14.

Alſo

2.E.3.c.3. Northampton. Crom. 203.

Also every Sheriff (within his County) may and ought to arreſt all ſuch perſons as go or ride armed offenſively, either in the preſence of the Sheriff, or in Faires or Markets, or elſewhere, in affray of the Kings People, and may commit them to priſon, there to remain at the Kings pleaſure (ſc. untill the Kings Majeſty hath ſignified his pleaſure of them: Or that the Kings Juſtices, before whom ſuch offendors ſhall be convict ſhall deliver them:) and alſo the Sheriff may ſeize and take away their armour to the Kings uſe, and prize the ſame by the oaths of ſome preſent. See my Countrey Juſtice, tit. Armour & Baylement. *Perſons in Armour.*

And yet they themſelves (ſc. the Sheriff and his officers) may lawfully bear armour and weapons: See hic poſſe comitatus.

The Sheriffs in Wales may put every miſruled and ſuſpect perſon within their Sheriffwick, under common Mainprize and Surety of their perſonal appearance, and that by Recognizance with two ſufficient Sureties, to appear before the Juſtices within the limits of their Authority, at the next General Seſſions to be holden next after the taking of ſuch bonds, and ſhall certifie the names of them that be bound before the Juſtices at the ſaid Seſſions, without concealment thereof. See the Stat. of 27. H. 8. c. 26. & 34. H. 8. c. 26.

12.R.2.c.6. Sheriffs may and ought to take from ſervants (to husbandry, and from ſervants to any Artificer, or Victualler) as alſo from Laborers, their ſwords, daggers, and other weapons, if they ſhall find them bearing any: except it be in time of War for the defence of the Realm, or when they be travelling with their Maſter, or in their Maſters Meſſage: and the Sheriff may and ought to arreſt ſuch offendors, and it ſeemeth he may commit them to priſon there to remain untill the next ſitting, or Seſſions of the peace, or Gaole Delivery: See before the Stat. 2. E. 3. cap. 3. *Weapons from Servants.*

Alſo the Sheriff ſhall keep their ſaid Weapons untill the next ſitting or Seſſions of the Juſtices, & ſhall then and there preſent the ſaid Weapons, together with the names of thoſe perſons which did ſo bear the ſame Weapons. But this Stat. of 12. R. 2. c. 6. ſeems to be wholly now repealed, by 21. Jac. cap. 28.

25.H.6.c.14. If any Noble mans, or other Subjects Cator ſhall (by way of purveyance) take any mans goods, or any carriage, againſt the Owners will, upon notice thereof, and requeſt made to the Sheriff (or other Officer) they ſhall preſently Arreſt all ſuch Cators and Buyers ſo offending, and ſhall ſend them to the Kings next Priſon, there to remain without Bayl, untill they have redelivered the ſaid goods, carriages, and things ſo taken, or the very value of the ſame: And if the ſaid Sheriff (or other Officer) ſhall do the contrary (ſc. ſhall not aſſiſt the party oppreſſed in ſuch caſe) they ſhall forfeit twenty pounds, the one half to the King, and the other half to the party from whom ſuch things be ſo taken (if he will ſue for the ſame; and if he will not ſue, any other may ſue for the King and himſelf, &c.) And beſides if any ſuch Cators or Buyers be duely convict of ſuch unlawfull taking, they ſhall yield to the party grieved, the treble value of the things ſo taken, and double Coſts of Suit, and withall ſhall make Fine and Ranſom to the King. *Purveyor del ſubject.*

By

Riotors. By the Statute made 17. R. 2. cap. 8. Sheriffs (and all other the Kings Officers) when they have notice of any unlawfull Assembly or Riot, or other offence against the Peace, they ought to raise the power of the County (if need be) and with all their power to apprehend such Malefactors, and to commit them to prison, there to remain untill due execution of the Law be done upon them: And all Lords (of Seignories) and all other the Kings Liege people, ought to be attendant to the Sheriff, and other Officers with all their power and force herein. 17.R.2.c.8.

And by a later Statute made 13. Hen. 4. If any Riot or unlawfull Assembly shall be made in any part of the Realm, the Justices of Peace (or two of them at the least) and the Sheriff, or Undersheriff (of the County where such Riot or Assembly shall be made) shall come with the power of the County (if need be) and shall Arrest all such Offendors, as they shall find there present (and all such as come in the Company with such Riotors,) And shall take away their Weapons and Armour, and shall cause the same to be prized, and to be answered to the King as forfeited. See the Stat. of Northampton, made Anno. 2.E.3.c.3. 13.H.4.7. *Arrest.* 2.E.3.c.3.

And in the execution of this Arrest of Riotors, the Sheriff, &c. may justifie the beating, wounding, or killing of any of the Riotors, if they shall resist, or will not yield themselves.

Record. After the Arrest made of such Riotors, the said Justices and Sheriff or Undersheriff shall make a Record in writing of the said Riot, &c. of all that which they shall find or see done in their presence against the said Law (without any enquiry thereof by a Jury) and such a Record shall be a sufficient conviction of the Offendors. 13.H.4.c.7.

Imprison. After such Record made of the Riot, the said Justices and Sheriff or Undersheriff shall presently commit the Offendors to prison: And also may Assess their Fines (or else they may leave that to the Assizes or Sessions, &c.) And the power of the County ought to be ayding to the Sheriff or Undersheriff for the conveying of the Offendors to the Gaole. Crom.61.b.

And if this Statute of 13. Hen. 4. be not executed fully in all and every part thereof by the Justices of Peace, and by the Sheriff or Undersheriff, &c. If they shall not arrest all such offendors as they shall find there present: Or if they shall not make a Record in writing of all that which they shall see done in their presence against the Law; Or if they shall not commit the Offendors to the Gaole (presently:) Then as well the two next Justices of Peace, as also the Sheriff or Undersheriff shall forfeit each of them one hundred pounds, Cromp. 61.b.

Inquiry. If the Riotors be gone before the coming of the Justices and Sheriff, then the same Justices, or two of them, ought diligently to enquire thereof (by a Jury to be returned by the Sheriff) within one moneth after such Riot or unlawfull assembly made; and if the truth cannot be found out, then within one moneth next ensuing after the enquiry, the same Justices (or two of them) and the Sheriff or Undersheriff shall certifie the King and his Council thereof; which Certificate 13.H.4.7.

Lamb 319. Cromp. 63. tificate ſhall be made into the Star-Chamber, or to the body and board of the Priy Council, or into the Kings Bench of the whole Fact, and all the circumſtances thereof, with the certainty of the names of the principal Offendors) which Certificate ſhall be of the force of an Indictment of twelve men againſt the Offendors: See 13. H. 4. cap. 7. *Certificate.*

13. H. 4. c. 7. Dyer 210. And for default of the Juſtices of Peace and Sheriff or Under-ſheriff in not making ſuch Certificate, as well the two next Juſtices of Peace, as alſo the Sheriff or Undersheriff ſhall forfeit each of them one hundred pounds to the King.

19. H. 7. c. 13. And if the ſaid Riot or unlawfull Aſſembly be not found by reaſon of any imbracery or maintenances of the Jury, then the ſaid Juſtices of Peace, and the Sheriff or Undersheriff (over and beſides ſuch Certificate which they muſt make, according to the aforeſaid Statute of 13. H. 4.) ſhall in the ſame Certificate alſo certifie the names of ſuch maintainors and imbracers, with their miſdemeanors that they know, upon pain of every of the ſaid Juſtices and Sheriff or Undersheriff to forfeit twenty pounds, if they have not reaſonable excuſe for their not certifying of the ſame.

Lamb. 320. If after the enquiry, and before the Certificate made, the Sheriff happen to die, or one of the Juſtices be put out of the Commiſſion, then no Certificate can be made by the opinion of Maſter Marrow.

But Quære thereof in regard of the penalties inflicted by the Statute aforeſaid. See more in my Country Juſtice, titulo Riots.

3. E. 1 c. 32. Poulton. No Sheriff ſhall ſuffer any Barrettors, or Maintainors of Quarrells in their Shires: This Statute ſeemeth to be here falſly tranſlated, ſc. the laſt word (Shires) for County Courts; for the old French Statute Book, is in theſe words, *Purvieu eſt que nul Viſcounte ne ſoeffre Barrettor mainteiner parols en Countes*: And the title over the Statute is thus, *Queux devient fere les Judgements en Countes ou Court de Baron*: And therefore this Statute ſeemeth to be only a prohibition to the Sheriff not to ſuffer any Barrettors to maintain any Actions, Suits or Quarrels in their County Courts: *Barrettors*

Co. 8. 36. ſc. that Sheriffs in their County Courts ſhall not ſuffer any perſon by fraud or malice to maintain multiplicity of unjuſt and feigned ſuits there, nor to ſtir up others thereunto. See Hic poſtea titulo County Courts.

13. E. 1. c. 39. If the Sheriffs Bayliff ſhall return a diſturbance of the execution of the Kings Procels, the Sheriff ſhall forthwith go in perſon (taking with him the power of the Shire) to do execution; and if he finds his Bayliffs falſe he ſhall impriſon them; and if he finds them true, he ſhall puniſh the reſiſtors by impriſonment, from whence they ſhall not be delivered without the Kings ſpecial Commandment: And if the Sheriff do find ſuch reſiſtance when he cometh (but cannot attach them) he ſhall certifie to the Court the names of the Reſiſtors, their Aiders, Conſenters, Commanders, and Favourers, *Diſturbers of the Sheriff.*

Vide Dyer, 212. & hic. cap. 42. and

and they ſhall be Attached by a Writ out of the Court to appear there, &c. But the Sheriff ſhall not puniſh (otherwiſe than by Impriſonment) ſuch Reſiſters, as he findeth himſelf: For the Offendors may Traverſe the Sheriffs Certificate or Return: And beſides, the words of the Statute are further thus, Neither ſhall any Officer of the Kings meddle in Aſſigning the puniſhment, for our Lord the King hath ſpecially reſerved it to himſelf, becauſe that Reſiſters bèn reputed diſturbers of his Peace, and of this Realm. But yet the Sheriff may Arreſt and Impriſon ſuch Offendors or Reſiſters (as he ſhall find himſelf) as breakers of the Kings Peace, and ſo to have their bodies forth coming and ready to appear in the Kings Court at the coming of the Juſtices; Again, the words of the Statute are further, that if the Sheriff ſhall return (into the Court) that he could not execute the Kings Procels for reſiſtance, he ſhall be amerced, for he ſhould have taken the power of the County to have aided him therein, and that ſuch returns of the Sheriff redounds much to the diſhonour of the King.

Amerced. Poſſe Comitatus.

Mr. Bracton, lib. 3. cap. 37. ſaith, Officium vic. eſt, ſi quis Conquëratur de injuſta Captione averiorum, &c. (*ſoit ce, per bre' ou Plaint*) accedat vic. ad locum, &c. Et petat viſum de averiis, &c. Et ſi ſit aliquis qui velit contradicere, vel propter hoc in eum manus violentas injecerit, Capiat delinquentes, & in Gaolam projiciat, quouſq; Dom. Rex inde præceperit voluntatem ſuam, &c.

And note whereſoever the Sheriff (or any other of the Kings Officers) may take Poſſe Comitatus, or have authority either to execute the Kings Procels, or to apprehend Felons, Riotors, or other breakers of the Kings Peace, if the Sheriff, or other Officers, ſhall find reſiſtance therein, it ſeemeth they may Arreſt and Impriſon all ſuch reſiſters, and other ſuch offendors, which they ſhall find there preſent: See my Country Juſtice, *titulo* Arreſt and Impriſonment.

And whereſoever the Sheriff ſhall take Poſſe Comitatus with him, although it be without ſufficient Cauſe, yet his ſervant, or any other perſon, may juſtifie the ſame by the Sheriffs Commandment, for that ſuch their doing was by Authority. 5. H. 7. 4, 5.

Alſo whereſoever the party againſt whom any lawfull Procels, Writ, or Warrant is granted, ſhall after he is Arreſted, or other execution of ſuch Warrant done, make reſiſtance, or ſhall make an aſſault upon the Officer, there the Officer may juſtifie the beating and hurting of him, and of all other that ſhall diſturb the Officer in the execution of ſuch Procels, Writ, or Warrant; and may alſo impriſon him and them (in the Stocks) for the ſame as it ſeemeth. See Br. Treſpaſs 218. & 296. For the beating of ſuch as reſiſt, or aſſault the Officer. 2. E. 4. f. 6. 21. H. 7. 39.

And if the Sheriff, or his Bayliff, or other Officer cometh by vertue of the Kings Procels, or other Lawfull Warrant to Arreſt another for Debt, or Treſpaſs, &c. who maketh reſiſtance, and thereupon is ſlain by ſuch Officer, or by any of his Company, this hath bèn taken to be no Felony, but juſtifiable. See Fitz. Coron. 261. Doctor & Student 133. b. Cromp. 24. a. 30. b. Tamen quere what the Law is at this day, in this laſt Caſe.

Sheriffs

Sheriffs alſo may bail their priſoners in divers caſes, See hic poſtea tit Bailement. *Baile priſoners.*

13. R. 2. c. 8. Sheriffs have the keeping and the cogniſance and correction of the aſſiſes of Bread and Ale, and alſo of falſe weights and meaſures, (which things do appertain to the Crown, Bract. li. 3. c. 35.) And they may in their Torne inquire of the aſſiſe thereof broken, &c. But if they upon inquiry ſhall find any to be defective, they ſhall take no amerciament or fine for any default touching the aſſiſe (of Bread and Ale) for the which ſuch an offendor ought to have bodily puniſhment by the Law; but (by the Statute made Anno 13. R. 2. c. 8.) they ſhall adjudge them to that bodily puniſhment which the offence requireth, and ſhall do due execution thereof. Lee hic cap. 109. *Aſſiſe of bread, &c.*

Stat. 51. H. 3. And by the old Statutes and cuſtomes uſed in this behalf, the Baker and Brewer for their firſt offence in breaking their aſſiſe, they ſhall be amerced; for the ſecond offence likewiſe amerced, (according to the offence;) for the third offence they ſhall be more grievouſly amerced and warned; but if they ſhall offend in breaking of the aſſiſe the fourth time (being thereof convicted by order of Law,) then they ſhall receive corporal puniſhment upon the pillory, or ſome other bodily correction, without any redemption either by gold or ſilver: And if the Baker doth exceed (in breaking the aſſiſe of his Bread) the full weight of two ſhillings ſix pence (which is one ounce and an half) in his farthing white loaf, then he ſhall ſuffer the judgement and puniſhment of the Pillory without any fine or admonition given to him; vide the Statute of the Pillorie and Tumbrel made Anno 51. Hen. 3. and another Statute incerti temporis cap. 2. & 6. Poulton Statutes at large page. 17. 111, & 112.

Sheriffs alſo in their Torne, ſome times upon their own view of the offence, & ſometimes upon preſentment thereof, may commit the offendors to ward or Priſon (in ſome caſes) and in other caſes may impoſe a fine upon them, or may amerce them, &c. See more hereof hic poſtea tit. Torne.

1. E. 4. c. 2. But now by the Statute made Anno 1. Ed. 4. cap. 2. the Sheriff (of himſelf, without Procels, or Ereats, to him delivered from the Juſtices of Peace) hath no power to levy any Amerciaments upon any preſentment, or Inditement taken before him in his Torne, but all ſuch preſentments, and Inditements, are firſt to be delivered by the Sheriff, to the Juſtices of Peace of the ſame County and the offendors to be proceeded againſt by the ſaid Juſtices, and then the Juſtices are to make out procels for the attaching of ſuch offendors, and for the levying of ſuch amerciaments, &c. and to deliver eſtreats to the Sheriff to levy the ſame thereby. See hic poſtea titulo Sheriffs Torne.

And yet now upon preſentement in the Sheriffs Torne, of any Inholder or Hoſtler, for not making their horſe bread of due Aſſiſe, the Sheriff may fine the offendors, and may make out procels againſt them; and they being taken the Sheriff may commit them to priſon until they have paid the fine. 32. H. 8. c. 41. & 21. Ja. c. 21.

Note alſo that in ſome Caſes the Sheriff hath two powers, or a

double and twofold Authority, ſc. the one as a Judge, and the other as an Officer, in one and the ſame buſineſs; As in a Writ of Redisſeiſin, in a Writ to enquire of Waſt, in a Nativo habendo, and in a Writ of Admeaſurement of Paſture, &c. In theſe Caſes the Writ is as a Commiſſion to the Sheriff, and by vertue thereof the Sheriff is Judge, of the cauſe (as the Juſtices of Niſi Prius are) Fitz. Attaint. 13. 2. H. 4. 3.

And therefore in a Writ of Redisſeiſin, the Sheriff, as a Judge, taketh, and holdeth Plea of the matter, and goeth to the Tenements to ſee them, and to hear the matter, and after he giveth Judgement, and committeth the Diſſeiſor to priſon: And as an Officer he executeth the Proceſs, &c. 7. H. 7. fol 4.

So upon a Writ of Admeaſurement of Paſture (which is Miſcountiel) the Sheriff, as a Judge, holdeth Plea, granteth or maketh out Proceſs, and examineth the matter: Otherwiſe the Suitors be Judges. Co. 6. 12.

To enquire of Waſt.

And in a Writ to enquire of Waſte, as alſo in a Writ of Redisſeiſin, &c. the Sheriff being both a Judge, and an Officer of Record, if therefore he ſhall make a falſe Return therein, the party cannot contradict it; and if the Land lie in a Franchiſe, the Sheriff cannot make his Warrant to the Bayliff of the Franchiſe, or Return Mandavi Ballivo, &c. For he cannot grant over his Judicial power, but he muſt enter the Liberty, and execute the Writ himſelf, otherwiſe it is Error. 11. H. 4. 7. H. 4 fol. 4. Br. Offic. 4. 9. 34. 37. 42. & Rediſ. 6.

Rediſſeiſin.

And upon a Writ of Redisſeiſin directed to the Sheriff, if the Sheriff by Inquiſition thereof taken before him, ſhall find the Diſſeiſee to be diſſeiſed again, &c. then the Sheriff ſhall preſently take ſuch Diſſeiſors, and commit them to priſon, there to remain at the Kings pleaſure, &c. and not to be delivered without ſpecial Commandment: For in caſe of Redisſeiſin, the Sheriff is made and appointed to be a Judge (by this Statute of Merton) and all his proceedings by force of the ſaid Statute of Record, &c. Co. 6. fol. 12. 20. H. 3. cap. 3.

Nativo habendo.

Alſo in a Writ de Nativo habendo, if it goeth to the Sheriff to hold Plea of the Matter, there he is both a Judge, and Officer, &c. But where it is directed to the Sheriff Returnable in Banco, there he is but an Officer and not Judge. See hic poſtea tit. County Court. Fitz. 78. k. & Fitz Retor. 52. Br. Offic. 36.

Note that in a Writ to inquire of Waſt, as alſo in a Writ of Redisſeiſin, &c. directed to the Sheriff, whereby he is made a Judge of the Cauſe, the Sheriff muſt ſit and execute the ſame in proper perſon, and not by his Undersheriff, or other Deputy, neither ought he to Write, &c. To the Bayliff of a Franchiſe, although it be within a Franchiſe, but the Sheriff muſt enter the Franchiſe, and muſt do it himſelf. And the Proceſs in ſuch Caſes ſhall be ſerved by the Sheriffs Bayliff. Fitz. Retorne 52. 53. 92.

Alſo in Caſe of Replevin, the Sheriff by the Stat. (of Marl. cap. 21. & Weſtm. 2. c. 2) hath been holden to be a Judge of the Cauſe, and the Statutes to be to him a Commiſſion, as a Juſticies, &c.

21. H.

21. H. 6. Fitz. Retor. 17. See more hereof hic postea tit. County Court.

Yea in every Case where a Justicies was directed to the Sheriff, he was holden to be a Judge of the Cause, and not the Suitors, ibid. But the Law is now holden otherwise. See Co. 6. 11, 12.

Mr. Bracton, lib. 3. c. 35. wrote thus, Potest quidem Vicecomes tenere plura placita, quæ non sunt ex Officio Vicecom. sed vice ipsius Regis, Non sicut Vicecomes, sed sicut Justiciarius Regis; Si hoc ei specialiter demandetur quod Juratam Capiat, & Inquisitiones faciat, Extensiones, & Partitiones, licet in quibusdam Judicium reddere non possit: Item habet ex speciali mandato Regis, non ex Officio Vicecomitis, ubi mandatum habet quod Justitiet aliquem, & quo Casu videtur quod omnia habere debeat ut Justitiarius, sine quibus placitum illud terminari non possit. Habet etiam ut Justitiarius, & non ex Officio vicecomitis, quod cognoscere potest de Averiis captis & detentis, contra vadium & plegium, quod quidem placitum pertinet ad Coronam, & quod ei ex Necessitate conceditur ad terminandum, &c. Item pertinet ad ipsum cognoscere de Assisis in Regno Statutis, & juratis per Regnum, si fuerint servata, vel non, sicut panis & Cervisiæ, & de falsis mensuris, que pertinent ad Coronam, & de quibus Attachiamenta facere potest simul cum Coronatore, usque ad adventum Justitiariorum: Item pertinet ad Vicecomitem visis Franciplegiis in Turnis suis duobus, singulis Annis per Hundreda, Wapentakia faciendis, &c.

Also in chooſing Knights for the Parliament, the Sheriff by the Statute (to ſome purpoſes) is made a Judge, ſc. to examine, and to judge of the ability of ſuch as be choolers of thoſe Knights: See hic tit. Knights of the Parliament.

Thus much concerning the Sheriffs abſolute authority; and now it followeth to Treat of his Miniſterial duty, &c.

And note that both theſe his Authorities (or duties) ſeem to be imapplyed in the Saxon word *Schire Reeve*, id eſt, *le Reeve del Shire*, which as much as Præpoſitus Comitatus, the Ruler or Governor of the County (See Co. 9. 49. & Co. L. 168.) importing his abſolute power, Or Ballivus, or Theſaurarius Comitatus, the Kings Bayliff; or Treaſurer of the County or Shire, importing his Miniſterial Duty, it being part of his Duty to gather up the common moneys and profits, &c. of the King within his County. And ſo the Sheriff is called Ballivus, and the County is called Balliva ſua. Co. L. 61. b. 168.

Beſides that the County is many times called Balliva, a Baylywick, peareth alſo by the formes of the Sheriffs Returns, Non eſt inventus in Balliva mea, &c.

This Miniſterial duty of the Sheriff, Mr. Cambden, pag. 160. ſetteth down thus. The Sheriff may well be termed the Treaſurer of the Shire or Province: For it is his Duty, to gather the Common Moneys and Profits of the Prince in his County; to Collect and bring into the Exchequer all Fines impoſed, even by diſtraining; to be attendant upon the Judges, and to execute their Commandments; to aſſemble and impannel the twelve men, which in cauſes do enquire of the

Fact, &c. to see Condemned persons executed; and to examine and determine certain smaller actions. Hæc ille. And therewith for the most part, agreeth that which followeth here.

The word Reeve is a Saxon word, and signifieth as much as a Bayliff: And as a Bayliff of a Mannor is one which hath authority to gather up Rents, Amerciaments, and other Duties, &c. due to his Lord, and to do other business belonging to a Mannor, so the Sheriff hath authority to do for the King in his County as aforesaid, sc. to gather up, and accompt for, the common moneys, and profits of the County which come to the Exchequer, and to do and execute other common businesses.

The word Bayliff came in with the Normans, and here signifieth an Officer concerning the administration of Justice of a certain Province. See the Terms of the Law, & Co. L. 168.

CAP. 5.

The Ministerial Authority, Duty, or Office of the Sheriff, consisteth principally in these things following.

His Oath. TRuly to keep the Kings Rights of his Crown, within his County: sc. the Kings Lands, Franchises, Suits, Rents, and all other things that belongeth to the Crown: See his Oath; & hic cap. 19. 6. 7. 8.

2. Truly to gather (and bring into the Exchequer) the profits and moneys due to the King within his County or Bayliwick: sc. the Kings Rents, Farms, Debts, Issues, Amerciaments, Fines and Forfeitures, hic cap. 9. 10. &c.

3. To seize to the Kings use the goods of Felons attainted, and of Fugitives, and of persons outlawed, Treasure trove, Wayfed goods, &c. Deodands, Estrays, Wreck of the Sea, Whales, Escheats, Wards, and Lands of Ideots, hic cap. 14. &c.

4. Truly to accomplish and put in execution all manner of Writs, Procels, Judgements, Executions, Commandments, and Precepts directed to him from any of the Kings Courts, which are to be executed within his County, cap. 20. Duely to Return all such Writs, &c. cap. 36. To Impannel Juries, and to Return them, cap. 85. &c.

5. To be attendant upon the Judges in their Circuits, &c. And to execute all their Lawful Commandments, &c. hic cap. 98.

6. To assist the Justices of Peace in his County: sc.

in some Cases { To joyn with them, / To attend them, / To execute their Precepts, &c. } See hic cap. 99. ibid.

7. To execute the precepts of Commissioners of Sewers, and other Commissioners, cap. 100.

8. To

8. To execute the precepts of Eſcheators, and Coroners. ibid.

9. To aſſiſt the Ordinary, in ſuppreſſing Hereſies. cap. 101.

10. Duely to kæp his Courts: ſcz.

his { Tourne; in this the Sheriff is a Judge of Record, and ſo hath a Judicial Power.
his { County, or Shire Court; which in ſome Caſes alſo is a Court of Record. See hic cap. 105. &c.

11. To proclaim certain Statutes, &c. cap. 102.

12. To make Purveyances for the King in ſome Caſes. cap. 103.

Of all theſe ſæ more fully hereafter in this Book.

CAP. 6.

Lands.

IT is parcel of the Sheriffs Oath, truly to kæp the Kings rights of his Crown, ſcz. his lands, &c. Now the Kings lands, be either the ancient *Demeſne* lands belonging to the Crown: or elſe ſuch lands wherein the King hath right, as deſcended to him from his Anceſtors, or of his own ſeiſin, purchaſe, or getting, or which come to him by eſcheat or forfeiture. *Lands.*

Fitz 16. d. Vide Minſh. verbo Domeſday book.

Mr. Fitz. ſaith, that the Book which is called *Domeſday* (being the ſurvey of England) was made in the time of Saint Edward the Confeſſor, and all the mannors and lands which were in the ſeiſin and hands of the ſaid Saint Edward, at the time of the making of the ſaid Book, are ancient *Demeſne*, and were anciently belonging to the Crown.

Ancient *Demeſne*, Domini cum antiquum continet omnes illas terras que ad Regem ſpectabant tempore Edwardi Confeſſoris. Vide Dr. *Cowell* 88.

And yet, vide 49. E. 3. 22. Br. Annc. Demeſne 9. and Mr. Lambard and Mr. Cambden.) that the Book called Domeſday was made in the time of King William the Conqueror, and that the lands in that Book, which are under the title, Terre Regis Edwardi, or under the title, Terre Regis, only (which is intended William the Conqueror) are ancient *Demeſne*; And ſo that the lands which were in the hands of the Conqueror, are alſo ancient *Demeſne*; And that by that Book only (or chiefly) ſhall ancient *Demeſne* lands be tried.

For the reaſon of the name of the Book, John Speed in his Chronicle, page 5. ſaies thus: King William the Conqueror cauſed a deſcription to be made of all England, how much land every one of his Barons

Barons poſſeſſed, how many Knights fees, how many plow lands, how many in villenage, how many head of beaſts, yea how much ready money every man did poſſeſs, and what Rents might be made of every mans poſſeſſions: The Book of which Inquiſition (yet in the Exchequer) was called Domeſday, for the generality of that judgement on all the land.

And ſo it may ſeem that Edward the Confeſſor cauſed ſuch a Book to be made (in his time) of all ſuch Mannors and Lands which were then in his own hands; And that William the Conqueror made an addition to the former Book, and cauſed to be entred therein, and added, ſuch lands as were then in the hands of the Conqueror himſelf; as alſo ſuch lands as were in the hands of every of his Barons, and other ſubjects.

Now it is to be conſidered what the Sheriffs Office or Duty is in this particular; or what the Sheriff by vertue of his Oath ſtands bound to do, if he knoweth of any of the Kings lands within his Bayliwick, to be concealed or withholden, by any Subject having nothing to ſhew for them.

And yet where any man ſhall encroach upon the Kings lands, or upon the Kings high-way, or ſhall levy or make any houſe, or building, wall, or hedge, &c. upon the Kings land, &c. or ſhall make any encloſure thereof, theſe are Purpreſtures, and to be enquired of, and reformed, by the Sheriff in his Tourne, and may be ſeiſed into the Kings hands by the Sheriff, &c. See hic cap. 107. ſee poſtea.

Where any lands, &c. ſhall come to the King by Deſcent, Revertor, or Remainder, or Eſcheat (in which cales, without any Office found, or other matter of Record, there is a poſſeſſion in Law veſted in the King, ſc. the freehold is caſt upon him in Law) there it ſeemeth that the Sheriff ex officio, may ſeiſe or take the profits of the ſame lands to the Kings uſe (making account for the ſame) and ſo may the Eſcheator. Stamf. de Prerog. folio 54. Co. 4. 58. Vide plus Stamf. & Co. 5. 52.

In ancient times the Sheriffs in their Tournes did enquire of Alienations in mortmoney; and of Alienations (by the Kings tenants) without licence. Lectura Mr. Littleton ſuper Stat. Weſtm. 2. And in ſuch Cales the Sheriff might have ſeiſed the lands to the Kings uſe, as lands forfeited, or eſcheated.

But the eſcheator is now a more ſpecial Officer for finding out the Kings title to lands, and other things. 4. Ed. 4. 24. Fi. 227. Co. l. 13.

CAP.

CAP. 7.

Franchiſes.

A Franchiſe is a Royal priviledge in the hands of a Subject. Finch. 38. And ſuch are every liberty, or commodity, which having their creation at the firſt, by the ſperial grant of the King, or of their own natures appertaining to the King, are given or granted to a common perſon, to have thereof ſome eſtate of inheritance, or for life, &c. And of theſe ſome are more Royal than others; of all which ſee more fully in Mr. Finch. 38.

But of ſuch as are leſs Royal (being almoſt infinite) ſome few of them, whereof our Law Books do moſt make mention, and wherewith the Sheriff hath any thing to do, are here ſhortly treated of: And if any man do hold any of theſe laſt Franchiſes without or contrary to the Kings grant or lawful preſcription, it ſeemeth to be enquireable in the Sheriffs Tourne, as a Purpreſture, or as an uſurpation upon the King. Co. L. 277. See Fitz. forfeiture 26.

For it is parcell of the Sheriffs Oath to keep the Kings Franchiſes; and therefore the Sheriff may enquire of, and ſeiſe for, and to the Kings uſe divers of thoſe things, as Franchiſes and Royalties belonging to the King by his prerogative. *Franchiſes.*

- The mean profits of lands for Intruſion, and Alienation without licence.
- The profits of the lands, &c. of Aliens. — Within their bayliwick or County.
- The profits of ſuch lands as come to the King by Attaindor, or Eſcheate.

He is to ſeiſe to the Kings uſe.

But in moſt Caſes, for the profits of lands there muſt be firſt an Office found for the King (which properly belongeth to the Eſcheator) ſcz. to enquire and find the certainty what lands they be, and the yearly value thereof, &c. before the Officer may ſeiſe them. Vide Co. 8. 169. & 9. 95.

The profits of the lands of perſons outlawed in perſonal actions, theſe the Sheriff may ſeiſe without any Office, &c. 21. H. 7. 7. 2.

And

And so it is concerning the goods of
- Felons attainted. Fit. Coro. 285, 308. 368.
- Fugitives. Fit. Coro. 287. Stamf. 192. 193.
- Outlaws.
- Egyptians.

Wayved goods, and goods confiscate, &c.

But by some opinions the Escheator is alwayes accountable for the goods of felons and fugitives, and the like; and not the Sheriff, save in a gross summ for the form of the profits of the County. Keil. 173. yet see the Sheriffs Oath, hic cap. 124.

Note that to lands and hereditaments, the King is intitled only or chiefly, by matter of Record. But for personal and transitory things, as Catalla Felonum, & Fugitivorum, Wreck of the Sea, Treasure trove, and the profits of the lands of persons outlawed in personal actions, and of Clerks convict of felony, the King shall be intitled thereto without any Office, or other matter of Record, 21. H. 7. 7. a. Perk. 5. 6. Stamf. de Prerog. 56. Co. 2. 52. 17. 12. & 11. 77.

And therefore for seising of lands, the Sheriff must be well advised that he hath the Kings Writ, or other lawful Warrant or Commandement from the Kings Courts or Justices or other lawful authority, so to do, lest otherwise he prove a disseisor: See 3. E. 1. cap. 24. 17. E. 2. F. ass. 373. 2. ass. pl. 9. & Co. 8. 169. 170. Br. Prerog. 91. & hic postea cap. 122. a difference taken where the Sheriff shall do a thing virtute brevis, that is a warrant to him; otherwise where he doth it virtute officii.

But where the King is not to have seisin of the land it self, but is only intitled to the profits of the lands (as of the lands of him that is outlawed in a personal action, or of a Clerk convict and the like) there the Officer may make seisure of the profits of such lands without an Office, &c.

And so in all Cases where a possession in law of a Freehold is cast upon the King, the King by his Officer may enter upon or seise the land it self, and take the profits thereof, without any Office found, &c.

But the Escheator is a more special Officer for finding out the Kings title to lands or tenements as is before shewed. And where the office is found before him, he is chargeable: but where the Office is found before Commissioners, there the Sheriff shall be charged. Cro. 173.

Also for goods and chattels, &c. the Sheriff may seise them, for they do vest in the King without any Office, or Inquisition to be found thereof. 24. E. 3. Br. Prerog. 30. & 38. 21. H. 7. 7.

And

And it was adjudged Hil. 37. Eliz. that the goods of one that is outlawed are in the King from the time of the judgement pronounced, although that no ſeiſure be made of them.

2 Where any Franchiſe ſhall be ſeiſed into the Kings hands, the King ſhall be anſwered the profits thereof, and the Sheriff is to ſeiſe ſuch profits to the Kings uſe: (Br. quo Warr. 5. 7.) But ſuch ſeiſor muſt be after judgement given in a quo warranto. ibid.

as { The liberties of a City, or Town corporate, that have ordinance of Pies, or other Franchiſe.
The office of the Warden of the Fleet, or of other Gaoler of fee.
The liberties of Lords of Mannors, which have Hundreds, or Leets, Fairs, or Markets, Waifes, Eſtraies, Wreck, Warren, Park, Catalla felonum, fugitivor. & utlagator. Tolle, and the like Aſſiſe of bread and beer, Pillory, Tumbrel, &c.

Note that ſuch as have the keeping and correction of the Aſſiſe of bread and beer, if they have not a Pillory, and Tumbrel to puniſh Bakers and Brewers that are faulty, they forfeit their Franchiſe, Keil. 148.

Alſo the Lord of a Leet ſhall forfeit his Leet, if his Seneſchal ſhall take any money or other reward, to ſpare the puniſhment of the Tumbrel, where one hath offended in the Aſſiſe of bread or beer. Cromp. 181.

By non Uſer of a Franchiſe within time of memory, the Franchiſe is forfeited. Ibid. & 14. H. 7. 1.

A Fair or Market may be forfeited and ſeiſed, for non Uſer thereof; or for miſuſer thereof. As where a man hath a Fair or Market to hold upon one day, and he holdeth it upon another day; or holdeth it two dayes together in one week. 2. H. 7. 11. 15. E. 4. 7. 32. aſſ. pl. 34. Finch.

But Fairs to be holden upon principal Feaſt-daies, or Sundayes, they may be holden within three dayes before or after, upon Proclamation thereof firſt made, without fine, or fee to the King. 27. H. 6. c. 5.

And note that a ſale made upon a Sunday, though in a Fair or Market overt, doth not alter the property of the goods. 12. E. 4. 1. Bryan.

If the Lord of a Fair or Market ſhall take exceſſive Toll, the King may ſeiſe the Fair or Market. 3. E. 1. c. 30.

Nota que le vend. ne payera tolle, m. le achater. 28. aſſ. Finch. 39.

Tolle eſt deſtre ewe de cheſeum que achate aſcum choſe (in Fair, ou Market) *per vender arere; m. cey. qua achata aſcum choſe la, pur ſon expence demeſne, ne payer tolle per ceo.* 9. H. 6. 45. Finch. 166.

Tolle ne ſerra pay per choſes pt. al fair, m. per choſes que ſont vend la: Et vnc. per Cuſtome autrement eſt. Finch 39.

Ne beſoigne de an. Confirmation de Franchiſes, de cheſcun Roy, comt que eſt iſſint uſe. 1.R.3.fol.4.

Franchiſe vient al Roy per Eſcheate, on aliter, vnc. ne. extinct. Keil.72. *tamen vide* Co.9.25. *que aſcuns ſont extinct, & aſcuns vey.*

3 The King ſhall have by his Prerogative all ſuch things whereof the owner, or property is not known, and that according to the old rule, Quod non capit Chriſtus, capit fiſcus.

as
- Tythes of a ground which is within no Pariſh (as in great forreſts, &c.) the King ought to have ſuch tythes, 22.aſſ.p.75. Fitz.Juriſd.31. Br. Prærog.143. And it ſeemeth that there be ſome ſpecial places in every County, which be out of any Town or Hamlet. Finch 80.
- Eſtraies, waived goods, wreck, treaſure trove, &c.
- Whales, Sturgeons, &c.
- Swans that be wilde, unmarked, and abroad at their liberty, the Sheriff may ſeiſe them, &c. Co.7.16.
- And by Gaſcoine, 8.H.4. all ſuch goods in England in which no man hath property, ſhall be adjudged to the King by his Prerogative, and the ſame law is of land, and the like. Br. Prærog.12.

Et vnc. cheſcun home pt. ſeiſer tl. biens qx. ennemies le Roy pt. in Angliter, & pt. reteyn. ex a ſon proper uſe, &c. *vide* 22.E.3.folio 16.& 7.E.4.14.

Anxi ſi le mere relinquiſh on perde un grand quantity de terr ſur le ſhore, le owner dl. mannor, on dl. terr prochein adjoyntat, aura ceo come perquiſite, & noy le Roy. vide Dyer folio 326. vnc.Br. v.27.contra.

4 Alſo in ſome Caſes the King ſhall have a fine for the miſuſer of a Franchiſe, &c. Br.Franch.14. 22.aſſ.p.34.

Regul. *Nota que franchiſe allow* in quo warranto, *on in Eyre, lyer le Roy.* Br. Franch.32.40.& 10.H.7.14.2.

Vnc. vide libro Intrat. tit. quo Warranto in fine, On Judgm. fuit dont per le deff. & inent meins le Entre eſt, Salvo jure Regis, per que ſemble que le Judgm. neſt final, ſi le Roy ad auter droit.

Bona felonum, fugitivor. & utlag. *& conuſance de pleez, home ne poit auer ceux per preſcription, mes tantum per charter & grannt le Roy: Et uncore ſi tiel charter ſoit allow in Eyre, ſemble que apres poient preſcribe in eux per aide de tyel allowance.* Co.9.27.b. 29.a. Stamf. de prerog.50. Br. Preſcrip.18.56, 59,60,& 64.

Market, Fair, Hundred, Leet, Warren, & Parke, home poet auer ceux per

per preſcription cy bien come per Chre. le Roy, & ſils vient al maines le Roy, uncore ne ſerra extinct. Br.Preſcrip.64.

But if any man do hold or have any of theſe without the Kings grant, or lawfull preſcription, it ſeemeth to be enquireable in the Sheriffs Torne as a Purpreſture.

Nota que nul poet a ceo iour, faire Parke, Chace, ou Warren ſans grant le Roy, Co.11.86.

Vuc.home pt.incloſe ſon terr, m.il ne doit faire Parke, &c. *de ceo per aler de beaſts Savages, ſa. licens le Roy, Cr. ſil fait, il ſerra ſeiſe in manus Regis. Adg.* vide Br.action ſ.Stat.48.

Pur le difference inter forreſt, Chaſe, Parke, & Warren, vide Cromp. author des Courts. 146.& 148. *and Mr.*Manwood. *folio* 7.& 22.

Auxi vide ibid. queux ſont beaſts de forreſt, & de Chaſe, & queux de Warren.

Wrecke, Eſtray & wayved bienz, home poet auer ceux per preſcription, & ſans charter, ou allowance in Eyre. vide 32. H.6. Abr.d'aſſ. 79.& Br. Preſcr.32,56,60,83.& Stamf.de prerog.folio 32.& 38.

Nota que bona felonum, fugitivorum,& utlag', & bona waivata, extrahura, & wreccum maris, *ſi ceux vient al maines le Roy per Eſcheate, forfet. outl. ils ſerra extinct, & merge in le Corone, & le Roy auera eux arere,* in jure Corone.Co.9.25. Vide Plo.219.a.& 238.b.Dyer.44.

Ou franchiſe ſerra parde, & ſerra ſeiſie in maines le Roy, pur default de apparance in quo warranto, Br.quo war.5,7,9,11.Keil.139.& 152.N. bre.162.

Ou Franchiſe ſerra parde out forfet, pur non uſer, ou miſuſer, vide Co.9. 50. Br. Franch. 14. 22. & quo warrant' 8, 9. & Finch. 38. & 100. N. bre.162.

The Book called the Mirrour of Juſtices treating of Franchiſes, libro.4.ſaith thus, *Si bayliffe de Franchiſe ne face Execution de Retorne dl vic.dl Commandement le Roy, le vicount pt.Enter en le Franchiſe, recovera le Roy ſon ſeiſin, & iſſint devient ceo guildable, que deut. fuit enfranchiſe.*

Et vuc. Franchiſe ne ſerra ſeiſe ſinon al ſuite le Roy in quo Warranto, Fitz. Franch. 1. *C. le* quo Warranto *eſt properment a tryer le validity dl Franchiſe uſurpe ſur le Roy, on forfet; Ou le judgment ſerra que le Franchiſe ſerra ouſte, & de ſeiſer le Franchiſe in neſme de Diſtreſs,* &c. (Finch. 100.) *Et ſur ceo iſſor bre. on precept al vic. de ſeiſer le Franchiſe accordt. & de reſpond. al Roy dl proffit,* &c. Br. quo War. 5. *Fitz. le vic. pt. ſeiſ. les biez. de felons, fugitives & utlaus, & Wayffes, Strayes, Wrecks, & tials ex officio.*

Ou Franchiſe ſeiſie in maines le Roy, poit eſte replevie, vide Stat. de quo Warranto *Anno* 30.E.1. Br.quo warrant' 5.7.& 11. Finch. 100.& Keil. 137. *Mes ceo ſemble deſte le grace le Roy de granter Replevin de eux, & nemy del droit,* Plo. 372.a.

On Franchiſe ne poet eſtre graunt ouſter. Br. Franch. 38.& quo warr.6.8.

But note where the Lord of any liberty, or mannor, &c. hath by charter and grant from the King, or by lawfull preſcription or allowance, any of the franchiſes or profits, &c. here above mentioned, there the Sheriff, nor his Officers, are not to ſeiſe them, or medle therewith; except they ſhall be forfeited by the Lord, and judgement given for the King in a quo warranto, as aforeſaid, vide the Statute de quo warranto, A.18.E.1.& 30.E.1.

As if the Lord of the Franchiſe, or Mannor, ſhall be outlawed or otherwiſe attainted of treaſon, or felony, or but outlawed in any perſonal account (as it ſæmeth) there the King ſhall have the goods and profits aforeſaid,as well within the Franchiſe,as without.

Nota quod exitus,fines,& Amerciamenta de Banco,vel coram ipſo Rege in Cancellaria, vel coram Theſaurario & Baronibus Scaccarii, vel coram Juſtic. Itinerantibus, vel ad Gaolum deliberandum, vel coram Juſtic. ad pacem,&c.vel Juſtic.foreſte, vel coram Seneſchallo & Hareſchallo hoſpitii Regis, vel Clerico mercatorum, ne ſont vaq. allow al aſcun in Leſchequer, ſa. ſpecial parol. & que ſont ſpecifie in ql. Court, ou antiſoits allow in quo Warranto. Dyer 269.

Auxi exitus tenent, vel fines & amerciamenta ſur vic. Conſtabul. vel aliorum Officior. Regis, ne ſont allowes la,ſa. tiel. clauſe ſc.licet tenent,vel miniſtri ſui Officiarii noſtri fuerint,eo que ſont Royals. Dyer 269.

Auxi le Prerog. de An. 10. *& waſt, nul freq. le Roy pt. ceo aver, comt. que il.clayme ceo per chre,ou antment.*Stamf.de prerog.50.& Fitz.Coron. 310. vide plus hic c.14.

CAP. 8.

Suit.

Suit. Alſo it is parcell of the Sheriffs oath truly to keep the Kings ſuits: and if they been concealed, or withdrawn, the Sheriff upon knowledge thereof, muſt cauſe them to be done, or reſtored again to the King.

Now ſuit is a ſervice which a man ought to do, by reaſon of his perſon, or by reaſon of his land and tenure; and to performe this, he ought to go to the Court of the King (or of ſome other) there to do that which appertaineth to the nature of his ſuit (be it to be a Judge, Juror, Cryer, Bayliff, or to ſerve the Procels of the Court, and ſuch like) And in ſuch Cales the party ought to attend in the Court, and to do that which appertaineth to his ſaid ſuit. Vide 9.E.4.3.

And yet where a man by his Tenure is to come to a Leet, or Hundred, and to do there ſome ſpecial ſervice, as to be a Cryer, or Bayliff,&c.they are no ſuit ſervices. Finch.145.

And

And this ſeemeth to be meant here of ſuit done, or due to be done, to the Kings Courts (ſc. to the Tourne, County Court, and other the Kings Courts:) and to this purpoſe there are two ſorts of ſuits, ſc. Suit real, and Suit ſervice.

Suit Real (or Royal) is a ſuit which by the Common Law is due *Royal.*
Fitz. Bar. 211. to the Sheriffs Tourne, or Leet, &c. (which are Courts Royals, viz. the Kings Courts,) And to theſe Courts all men of the age of twelve years or above, ſhall be compelled to come in perſon to learn and know the Laws, ſo that they may not be ignorant of things that ſhall be there declared and given in charge, and whereby they ſhall be governed. And it is called Real or Royal Suit becauſe of their allegiance, and this appeareth by common experience, when one is ſworn (in thoſe Courts to the King, and as in thoſe Courts all men ought to be) his oath is, that he ſhall be a loyal and faithfull Subject to the King. And this Suit is not due for their land which they have or hold, but it is due only *ratione del reſiancie del perſon*, by reaſon of their dwelling and abode within the Hundred or Leet. Vide Finch. 125. & t'mes dl ley. & Co. L. 100.

So that theſe Courts (the Sheriffs Tourne or Leet) are principally to cauſe every man to do their allegiance to the King, and there to be ſworn to the King to be his leige man; And beſides in theſe Courts they are to enquire of ſuch things as pertain to the King, and Commonwealth.

But no man ſhall be compelled to do this Suit, but only where he is reſiant or dwelling, and that but twice in a year. Vide Br. Leet. 39. 42. 12. H. 7. 18. & 25. E. 3. 23. Fitz. 161.

Suit to the County Court, is alſo a Suit Royal, and due by reaſon of reſiancy within the County. Finch. 115. See hic tit. County Court.

And ſo it may ſeem thereby that both the Sheriffs Tourne, and the County Court, are both the Kings Courts; And as the Sheriff by his Oath here ſtandeth bound truly to keep the Kings Suits, ſo inclusive he ſtandeth bound duely to keep his ſaid two Courts (the Tourne, and the County Court) and to ſee that all Suitors belonging to the ſame Courts, give their attendance, and do their Suit and ſervice there.

Ibid. Suit Service, is a Suit which by the Common Law properly is *Service.* due to the Kings Court (as to the Sheriffs Tourne or Leet twice a year) or to the Lords Court (from three weeks to three weeks, by the whole year:) And this Suit ſervice is due by reaſon of the tenure of a mans land, and ought to be done at every Court of every Lord, where he holdeth any lands or tenements of them.

That a man may hold lands by Suit ſervice to the Sheriffs Tourne, or to the Leet. Vide Fitz. 158. a. Fitz. Barr. 211. & t'mes dl Ley tit. Suit.

Alſo a man may hold lands to do Suit ſervice to the County Court, or Hundred Court, &c. Fitz. 158. a. M. vide f. 145. q. tiel Service pt. eſtee reperva & f. tenor, m. ne. Suite ſervice.

Par

Pur ſuit reall, le partie que fait default ſerra primes amerce; Et apres ſerra diſtraine pur le amerciament. Finch.123. Br.Suit.2.6.

Pur ſuit ſervice (ou ſuit dl Court) le Viconnt (ou Seignior) poit diſtraine, le tenant, mes ne amercera luy. Br.Suit 2.6.16.

Si le terre charge one ſuit due al Roy veigne in maines de diuers perſons, cheſcun tenant ſerra charge del ſuit aperluy, ſcz. cheſcun de enx fera ſuit. 45.E.3.f.23.Fitz.Bar.211. Ibid.

Per Statutum de Merton cap.10. *Quilibet liber homo qui ſecta. debet ad Comitatum, Hundred, &c. vel ad Curiam Domini ſui libere poteſt facere atturnatum ſuum ad ſectas illas pro eo faciendas: Il. ceo Stat. eſt intend tantum de Suite ſervice; C. al Torne dl vic. ou Leet, la le Suite ſerra fuit in perſon, & ney. per Atturny.* Vide Regiſt.172.

Al com. ley deut ceo Stat. de Merton; cheſcum doit f. ſon Suite ou proper perſon, & donque le miſcheiffe fuit, lon home tiet. de. 2. Sig. ſil. tiemor lo. Courts amb. al un meſme tps. le tent ſa diſtrey, & ul default in luy, per que ceo Stat. ordeyne que il pt. fayre Atturny.

Le party pt. f. ſon Atturny, per briefe le Roy; Ou per ſon Warr. *ſouth ſon Seale, ou per ſes letters, ſa. ſuer aſcumbre. Et ſi le Court, ou ſig. ou vic. refuſe tiel ſon atturny, il pt. an. bre. de Attachment, & recovera ſes damages, &c.* Fitz.156.a.157.c.d. & Fitz.Atturny.106.

Bre. de Atturnato faciendo durer per les vies dl ſig. & dl tenant: vuc. ſee. que ceo determin per alienation dl ſig. ou per alienation ou alteration dl tenancy.

Les parol. dl dit Stat. de Merton ſont, Quilibet liber homo, &c. vuc. un feme, Eccleſiaſtique perſon, ne Enfant deins age de 12. az. ne fera aſcum Suite al Torne, ou Leete; m. autem. al Court baron, &c.

Suite eſt dit in.4. Manners, tots qx. ſee. deſire deins ceo Stat. t'mes dl ley.

1. *Suite Reall, eſt per cauſe dl Reſiancy (ut ſuper) & veſt ſumq; in un Lieu.*

2. *Suite Service, eſt per reaſon dl Tenure, ut ſupra.*

3. *Suite Covent. eſt lon home per Indent. Covent. de f. ſuite a ſon Court; & per ceo home auera bre. de Covent.*

4. *Suite Cuſtome, & ceo eſt lon ceo & mes Auncеſtors ont eſtre ſeiſie de ure. ſuite demeſne, & ure. Anncеſtars de temps. dont memory, &c.*

Auxi ceo eſt lon Coppiholds. ou anter Cuſtom. tent (& c. que Eſtate il ad) ont uſe de faire Cuſtome ſervice; & per default dl ceo Suite Cuſtome, le terr ſerra ſeiſie, &c.

Alſo by the word Suits may be underſtood the Kings Suits in Law, ſc. that the Kings Suits in Law ſhall be preferred, &c. wherein the Sheriff is for the Kings profit to do his beſt endeavour according to his office, ſc. that the Kings debt be firſt levied. Vide hic cap.10.19.25.& 58.

CAP.

CAP. 9.

Rents.

The Sheriff alſo by his oath is bound not to aſſent to deceaſe, to leſſing, ne concealment of the Kings rents, and whenſoever he ſhall have knowledge that any of them bee concealed or withdrawn, he ſhall do his true power to make them to be reſtored to the King again; and if he cannot do it, he ſhall certifie the King, or ſome of his councill thereof, &c.

Note that the Sheriff is Ballivus Comitatus (as I ſaid before) and his County is alſo called his Bayliwick; and as a Bayliff of a manno^r is to gather up his Lords rents, and other duties, ſo the Sheriff his office is to gather up not only the common moneys and profits of the Shire which be due to the King within his County, but alſo to gather up the Kings rents within his Bayliwick (as it ſeemeth) and for which he may diſtrain. See Fit. 234. b. But at this day this rather belongeth to the office of the Kings Receivers, &c. or to the Eſcheator to enquire thereof. Finch. 127.

For there be now particular Collectors and Receivers of the ordinary rents of the Kings lands, &c. which do anſwer the ſame into the Exchequer. And the Sheriff medleth not now with the gathering or levying thereof, except it be by Proceſs out of the Exchequer; But the Eſcheator is the officer to whom Proceſs is uſually directed concerning the Kings revenews, &c. Co. 4. 57. Fi. 78.

And yet at this day if the Sheriff ſhall diſtrain the Kings farmor or tenant, for rent due to the King, &c. and ſhall account for the ſame rent in the Exchequer, this ſeemeth to be a good juſtification for the Sheriff, in an action of treſpaſs brought againſt him for taking the tenants Cattle, &c. Liber Intrat. tit. Treſpaſs.

Alſo for the Kings ordinary rents, upon Proceſs directed to the Sheriff for the levying thereof, the Sheriff may levy the ſame, upon the body or goods of the Kings tenants, or of his ſureties (for default of the tenant) or upon his land, or of his heirs, or upon the Executors, &c. of the Kings tenant, or upon other the Poſſeſſors of his lands or goods.

By the word Rents, ſeems to be meant not only Rent ſervices and Rent charges, &c. (due to the King) but alſo Farmes or Farm rents due to the King: ſc. Rents reſerved in fee Farm, or upon Leaſes.

51. H. 3. You ſhall find by the Statute made Anno 51. H. 3. de Scaccario, that Sheriffs might let to Farm, the Kings wards, and eſcheats, and were anſwerable for the Rent, &c.

10. Ed. 1. Alſo by the Statute made 10. Ed. 1. de Scaccario, it appeareth that Sheriffs

Sheriffs are accountable yearly in the Exchequer for the Farms of Serjeanties and Aſſarts, the Farmes of Cities, Boroughs, and Towns, and other Farms, &c.

Alſo by the Statute of 34. H. 8. c. 16. it appeareth that Sheriffs were charged with one Farme demanded in one whole ſumm, growing of the iſſues and profits of certain of the ancient Demeſnes of the Crown; As alſo of certain rents thereto belonging: And with one other Farm growing of the perquiſites and profits of their Courts: And with one other Farme of Purpreſtures, Aſſarts, Serjeanties, and minute Rents, &c.

Theſe words Purpreſtures, and Aſſarts, ſeem here to be treſpaſſes or offences done in Foreſts, hurtfull to the Vert and Venilon of the ſame: This Purpreſture of the Foreſt, is by building and new erecting of houſes, and other incloſures within a Foreſt, without the ſpecial licence of the King, or of his Juſtice in Eyre. Manwood. 54.

And the word Aſſart is an antient Engliſh word ſignifying to make plain, &c. Aſſartum eſt quod redactum eſt ad culturam: and an Aſſart of the Foreſt, is the deſtroying of a covert, by cutting and ſtubbing up, or plucking up by the roots, thoſe woods that are thickets or coverts of the Foreſt, to make the ſame a plain, or arable land; this is fineable to the King, if it were not done by the Kings licence: And if any man would have the ſame to continue, he muſt compound with the King, or with his juſtice in Eyre. Now upon compoſition for the continuance of ſuch Aſſarts, or for the toleration or ſuffering of ſuch new erected buildings, or incloſures within the Foreſt, there was a yearly Rent reſerved to the King, which was at the Judgement and diſcretion of the Lord chief Juſtice in Eyre of the Foreſt, and entred of record at the time of the arrenting thereof. And in the times of King Edward the firſt, ſecond, and third, when the Juſtices of the Foreſt did uſually hold their Iters, great benefit did yearly grow to the King by theſe fines and Rents. But of later times, there hath been ſeldome any Juſtice ſeat at all kept for Foreſts: and when kept, very ſlenderly performed: the records not kept, or not returned into the Exchequer; and ſo the ſaid Rents are now unknown, &c. See Manwood & Minſh.

Alſo by the Statute of 14. Ed. 3. c. 9. it appeareth that the Sheriffs did Farme of the King the Hundreds and Wapentakes. 14. Ed 3.

Alſo by the Statute of 1. H. 4. c. 11. it appeareth that the Sheriffs were charged with the antient Farmes of the Counties; and that they Farmed the Counties of the King. Quære what theſe Farmes of the Counties and of the Hundreds are. 1. H. 4.

And by the Statute of 4. H. 5. c. 2. Sheriffs ſhall be charged to the King for all ſuch things as be or run in yearly Farmes or demands.

See alſo the Statute of 2. & 3. Ed. 6. c. 4. of Farms, and Vicountiels, &c. due to the King and withholden from him.

Note that there be certain Farmes called Vicountiels, which the Sheriff for his time payeth a certain Rent for, to the King, and mak-

eth

eth what profit he can of them: And theſe Vicountiels ſeem to be the Farmes mentioned in the former Statutes of 10.Ed.1.14.Ed.3.9.1.H.4.11.4.H.5.2.34.H.8.& 2.& 3.Ed.6.c.4. here before mentioned.

But more particularly theſe Vicountiels are ſaid to be certain duties of antient time, due to the King, &c. As for Caſtle Guard; for the Sheriffs ayd; for the Leet Fée, &c.

And theſe are commonly called certainties, which are gathered up by the Sheriff, or their Bayliffs. And ſee Cro.47. b. where a Sheriff preſcribed, pro Auxilio Vicecomitis.

And for the Farmes called Vicountiels, for which the Sheriff for his time payeth a certain Rent to the King, and may make what profit he can of them, See the Statute, Anno 4. H.5. 2. All Sheriffs ſhall have allowance upon their accounts, by their oaths, of things caſual, that be not in yearly Farmes or demands.

2. H.7. 6. By Brian Batcliffe, the Sheriff ſo ſoon as he is made Sheriff, is accountable to the King, of all Farmes, Rents, Iſſues and Profits of the County, which run in account under the name of Vicountiels: But for the Extreats of the green Wax (ſc. out of the Exchequer) and ſuch others (as for the fines and amerciaments ſet in any Court upon offendors, iſſues loſt for default of appearance, the Kings debts, &c.) the Sheriff is not chargeable as Sheriff at the firſt, nor at any times after, nor to levy the ſame, except that the ſumms, ſcz. le'ſtreats del ſommes come to him out of the Exchequer, and then when he hath them, he is chargeable and accountable.

And by Blage Anno 6.H.8. the Sheriff is accomptable for the profits of the County, but (ſaith he) that muſt be underſtood in a ſumm in groſs for the Farm of the profits of the County. Keil. 173. hicc. 122.

What the Revenues, Iſſues and Profits of the County be; See 20. H. 7, folio 12. hic antea cap. 3.

In an action of treſpaſs brought againſt the Sheriff for breaking the Plaintiffs cloſe, and taking his Cattle, &c. the Sheriff juſtified for diſtraining for Rent due to the King, in jure Corone, by preſcription as parcel of the Farme and profits of his County of N. to the uſe of the King, &c. and that he hath accounted for the ſame in the Exchequer. Libro Intrac. tit. treſpaſs, in Rent div. 6.

Note that in the former caſe, the ſervant of the Sheriff juſtified by the commandement of his maſter, &c. Et quod in clauſum predictum portis inde tunc apertis intravit, &c. So as it ſeemeth the Officer cannot juſtifie to break open a door, or gate, to diſtraine for the Kings Rents, &c.

M. nota que ſi home tient del Roy, & ſon Rent eſt arere, le Roy (ou ſes Officers) poient diſtreyne in les auters terres, cy bien tenus des auters, come de luy meſme: Et eadem lex pur ſon ſee Ferme. 44.E.3. Br.Prerog.77.& 13. H. 4.6. Pl.239.a.Finch.

Et iſſint oſt pur Rent charge, Roy poet diſtr' pur eeo in touts autres terres. 13. H. 4. Br. Prerog. 68.

Si tenant le Roy alien aſcun parcel de cel ſa. Licence, le Roy (ou ſon Officer) pt. diſtrain pro tot. ſon Rent, in le parcell iſſint alien, m. ſil ad licens, &c. le alienee ne ſerra charge oueſt. le quantity del terr que il ad perchaſe; & a cel purpoſe il pt. aver bre. de Deneerando pro rata portione. Fitz. 235. a.

CAP. 10.

The Kings Debts.

The Sheriff from time to time during his office, ſhall with as much convenient ſpæd as may be, levy the Kings moneys, upon all ſuch Schedules, Eſtreats, and Places as ſhall be directed to the Sheriff out of his Majeſties Court of Exchequer.

And at the Kings Courts ſhall deliver into the Exchequer the Eſtreats of Amerciaments, Fines, Iſſues and other things aſſeſſed, &c. before them. Sæ hic c 13. 90. & 122.

Debts. By the Statute 9. H. 3. c. 8. the King nor his Bayliff, ſhall not ſeiſe 9. H. 3. c. 8.
Land. any land or rent for any debt, as long as the preſent cattels of the Plo. 440.
Sureties. debtor do ſuffice to pay the debt, and the debtor himſelf be ready to ſatisfie therefore. Neither ſhall the pledges or ſureties of the debtor be diſtrained, as long as the principal debtor is ſufficient for the payment of the debt: and if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges ſhall anſwer for the debt: and then if the pledges will, they ſhall have the lands and rents of the debtor, until they be ſatisfied of the debt, which they before payed for him (except that the principal debtor can ſhew himſelf to be acquited againſt the ſaid ſurety) Fitz. 137. c.

Nota que tanque le Stat. de 33. H. 8. c. 39. le Roy ne pt. pur dett, touche le terr, ou heir, d'aſcun Dettor; ſi les biens del dettor fuer ſuffic. de ſatisfier le debt, & eeo fuit per force del prim. pt. del. Stat. lintdit de mag. Charta. 9. H. 3. c. 8. vide Plo. 440. a.

M. quant al perchein pt. del dit Stat. eeo ſemble d'eſtre void, quant al Roy, C. in chaſcun manner le Roy avera ſufficient ſuertye de tout que a luy appertayne, tout ſoit que le principal ſoit ſuſficient ou nient ſuffic. Et in chaſcun caſe ſi le principal ſoit aſſets ſuffic. vnc. le Roy pt. eſlier, lequel il voet diſtrainle principal, ou les pledges.

Nota auxi que le forme del Eſchequer (ut dicit.) eſt, que ſi un home priſt un forme de Roy, & trove ſuertyes per le forme on rent, que ſi le rent ſoit adarere, le ſummons del Pipe iſſer Cybien envs. le pledges come vers le principall: M. le vic. per force del dit Stat. ne fera execution des bis les pledges on mainpern. ſivo per default del principal.

Auxi

Auncle Roy pl. diſtr. ou charge les pledg. ou ſurtyes, ſa. aſcun eſpecialty : pl. ems. les pledges nul action eſt dane al com. ley per aſcun party ſa. ſpecialty, ou Recog. forſpris per le Roy, vide 44 E. 3. fol. 19. Fitz. Dett. 126. per le darem caſe.

And now by the Statute of 33 H. 8. c. 39. not only the land, but alſo the heir of the Kings debtor are chargeable to pay the Kings debt. Plo. 440. yea the Sheriff may levy the Kings debts either upon the body or goods of the debtor, or his ſureties; or upon their lands in their own hands, or in the hands of their heirs, or feoffees, or of any other perſon claiming or having the ſame from them by deſcent, or purchaſe. Alſo the Executors, Adminiſtrators, Aſſignes, and other poſſeſſors of the goods of the Kings debtor, are chargeable to the Kings debt. See hic poſtea.

9 H. 3. c. 18. Alſo by the former Statute of 9 H. 3. cap. 18. If any that holdeth of the King any Lay fee do die, and the Sheriff or Bayliff do ſhew the Kings Letters Patents or Summons for debt which the dead man did owe unto the King, it ſhall be lawful to the Sheriff or Bayliff to attach and inroll all the goods and cattels of the dead, being found in or upon the Lay fee to the value of the ſame debt by the ſight of lawful men: So that nothing thereof ſhall be taken away, until the King be clearly paid off the debt, and the reſtore ſhall remain to the Executors to perform the Teſtament of the dead, &c. *Roy ſerra primes pay.*

Nient obſtant que ceo Stat. (de 9 H. 3. c. 18.) *rar le lon aſcun tient dl Roy aſcun Lay fee, &c. Mes. ceo Statute ſerra intend des aſcun auters Debtors le Roy.*

Auxi ſi aſcun ſoit impriſon per le dett de aſcun auter hor. que de Roy, in quel Lieu, que il ſoit, ſil con. luy meſme datter al Roy, la il ſerra remove al Fleet a ſur tiel Counſance, & quant le Roy eſt ſatisfye donque il ſerra remand al auter lieu (ou priſon) an il fuit impriſon al pm. ſil ne ſait datter al Roy eyleurs, &c.

Pl. ſi home confeſs dett al Roy a delayer execution que un auter ad us luy Come il ſerra demeſne, vide Stat. 2 R. 2. c. 12. hic poſtea.

Le Summons in ceo Stat. de 9 H. 3. cap. 18. mention, ſemble deſire un Scire facias hr. al Eſchequer : Et ſur tiel Summons ou Proces niet ohe dit Stat. dit, Liceat Vicecomiti, &c. *attachiare & imbreviare, Omnia bona & catalla defandi*, &c. *una. le vic. pour vender eux*, &c. *Pl. le vic. me ſuiſer, nec unad. tiel bie. per dett le Roy, ſine. ſelonque le quantity dl dett, & per viſum vicinorum*, ſc. *q. les bee. ſont preiſe per eux.*

51 H. 3. Afterwards by the Statute De diſtrictione Scaccarii, made Anno 51 Hen. 3. Foraſmuch as the Commonalty of the Realm had ſuſtained great damages by the wrongful taking of diſtreſſes, which had been made by Sheriffs, and by other the Kings Bayliffs for the Kings debt, or for any other cauſe: it was therefore provided and ordained, That when a Sheriff, or any other man (upon Proceſs out of the Exchequer) doth take the beaſts of other by way of diſtreſs for the Kings debt, &c. they to whom the beaſts do belong may give them their

The owner may feed his cattell impounded.

feeding without diſturbance (ſo long as they be impounded (without giving any thing for their keeping.

No ſale within fifteen dayes.

And that the beaſts, nor no other diſtreſs taken for the Kings debt, nor for any other cauſe be given ne ſold within fifteen dayes after the taking: See Br. Diſtreſſ. 32. & 72. and the Stat. 51 H. 3. & 7 E. 6. cap. 1. Ibid.

And if any bring the tally of a payment made in the Exchequer, the diſtreſs ſhall ceaſe: and if he bring the tally (or acquittance of any Sheriff or Bayliff, of payment made to them of the thing demanded, and will find pledges that he will appear in the Exchequer upon the next account to do as right ſhall require, then the diſtreſs ſhall ceaſe; and the Sheriff or Bayliff ſhall cauſe him to be attached that ought to have acquitted him, that he may appear upon the ſame account to do as right ſhall require, and there ſhall have the names of the pledges. Ibid.

Cattell not diſtrainable.

Alſo it is provided by the ſame Statute, that no man of Religion nor other, ſhall be diſtrained by his beaſts that gain his land, nor by his ſheep for the Kings debt, nor the debt of any other man, nor for any other cauſe by the Kings or others Bayliffs, but until they can find another diſtreſs or cattells ſufficient, whereof they may levy the debt, or that is ſufficient for the demand (except impounding of beaſts that a man findeth in his ground, damage feſaunt, after the uſe and cuſtome of the Realm:) and that ſuch diſtreſſes be reaſonable after the value of the debt or damage according to the value, and by the eſtimation of neighbors, and not by ſtrangers, and not outragious: Howbeit the King willeth and commandeth that Sheriffs, or their Bayliffs that have received the Kings debt of the ſummons of the Exchequer, and have not acquitted the debtors thereof at the next account, ſhall be puniſhed, 52 H. 3. cap. 4. 51 H. 3. 52 H. 3. c. 4. See 28 E. 1. c. 12. Fitz. 174. b. P. diſtr. 8. 11.

A diſtreſſe ſhall be reaſonable.

Le vic'. acquitera le dettor.

Alſo by the Statute of 28 Ed. 1. no diſtreſs ſhall be taken of Plow-cattel for the Kings debt, &c. And ſuch diſtreſſes ſhall not be over great, nor driven too far. 28 E. 1. c. 12.

The Kings debts. Extreats of Fines, &c. ſhall be delivered in the Exchequer.

By the Statute De Scaccario, made Anno 51 Hen. 3. It was ordained that all the Juſticers, Commiſſioners and others ſhould from thenceforth deliver into the Exchequer at the Feaſt of Saint Michael from year to year the Extreats of Fines, and Amerciaments made and taxed before them, and of all things whereof the Extreats are wont to be delivered there: and that they of the Exchequer ſhall make Extreats of the ſummons through all Shires, &c. De pace 560. & Stat. 15 E. 2. 51 H. 3. & 15 E. 2.

Le vic'. acquitera le dettor.

Alſo by the Statute made 3 Ed. 1. c. 19. It was ordained that Sheriffs, &c. (which have levied or received the Kings debt) ſhould from thenceforth lawfully acquit and diſcharge the debtors at the next account after they have received ſuch debts (and then the debt ſhall be allowed in the Exchequer, ſo that it ſhall no more come in the ſummons:) And if the Sheriff otherwiſe do, and thereof be attainted, he ſhall pay to the Plaintiff thrice as much, as he hath received, and ſhall alſo make fine at the Kings pleaſure: and beſides the Sheriff ſtands bound thereto by his Oath, Article, 4. See alſo the Stat. of Weſt. 4. als. dictus Stat. de Attinctis. Anno 13 E. 2. 3 Ed. 1. P. Account. 52.

Alſo

3 Ed. 1. 29. Alſo by the ſame Statutes, Proces (ſc. the ſummons out of the Exchequer) for the levying of the Kings debt, ſhall be ſhewed to the debtor that demands the ſight thereof without denial or fee. And the Sheriff ſhall make Tallies (or acquittances) to all ſuch as ſhall pay him (or his Officers) their debt due to the King, & 27 Ed. 1. c. 2. *Proces ſhall be ſhewed.*

Note that the Summons of the Exchequer is a Scirefacias. If the debtor hath once paid the Kings debt to the Sheriff, &c. and notwithſtanding the ſame be another time demanded of the party, &c. the ſaid Sheriff ſhall pay to the party grieved his treble damages; and beſides ſhall make fine to the King, 3 Ed. 1. c. 19.

Alſo by the Statute 1 R. 2. c. 5. when any debts be once paid, and the Tailles thereof made, rejoined, and allowed in the Exchequer, this debt ſhall never after come in demand. And if any Clerk of the Exchequer ſhall make any Proces after the Taill allowed: Or if any Clerk of the Exchequer ſhall make out any Proces for a debt that is paid, he
1 R. 2. c. 5. ſhall loſe his Office, and be impriſoned until he hath made grée with the party, &c.

42 E. 3. 7 H. 4. Lib. 4. 16. Again by the Statutes of 42 Ed. 3. c. 9. & 7 Hen. 4. c. 3. Eſtreats ſealed under the ſeal of the Exchequer, ſhall be ſhewed to the party indebted, by the Sheriff, or his Officers, when they levy the Kings debts, and that which is paid ſhall be totted. *Eſtreats ſealed ſhall be ſhewed.*

And Sheriffs ſhall account by Eſtreats ſo totted, and by none other: and the copy of the Eſtreats, wherein they touch the Franchiſes of Lords, ſhall be delivered to the Bayliffs of the Franchiſes, under the ſeal of the Sheriff, and the ſame Bayliffs ſhall yeild their account in the Exchequer, by the ſame copies ſo delivered, 42 E. 3. c. 9.

Note that the Grein War of the Exchequer, is a word uſed for the Eſtreats delivered out of the Exchequer to the Sheriff, under the Seal of the Exchequer Court, to be levied in the County. Miſh. & vide hic cap. 122.

28 E. 1. c. 12. If the Kings debtor can find ſufficient ſureties, to pay to the Sheriff the Kings debt, before the day of the Return of the Writ, the Sheriff ſhall deliver the diſtrels (or beaſts) taken again; otherwiſe the party may have an attachment againſt the Sheriff or Officer, &c. Fitzharb. 174. b. c. *Diſtreſſe re-deliver.*

Dettz poient eſtre due al Roy in diuers mannors: ſc. *per atteynder, utlary, forfeiture, ou done, ou per Judgement, Recog, ou Specialty.*

Nota que touts obligations recog. & ſpecialties faits al Roy, ſerra de force del ſtat. ſtaple: vide hic Stat. ſtaple. & Stat. 33 H. 8. c. 39. *Regule.*

Les ſuits le Roy ſerra preferr deut le ſuite d'aſcum auter, & le Roy auera execution pur ſes debts, deuant aſcun common perſon: ſc. *ſi ſon ſuit ſois commence ou proces ſois agard per le dit dett, deuant l' auter ad Judgement*, vide Stat. 9 H. 3. c. 18. & 33 H. 8. c. 39. Br. Prerog. 71. *Et his poſtea Execution ſur Stat.* vide Co. L. 131. b.

Nota

Nota que le Roy poet priviledge ſon detter, que nul auera execution vers luy, tanque le Roy ſoit ſatisfie. Br. Prerog. 105. Co. L. 131. b.

But the other Creditors may have the actions againſt the Kings debtor, and proceed to judgement, but not to execution, unleſs they will pay the Kings debt, &c. Stat. 25 E. 3. c. 19.

Yet in ſome caſes the Subject ſhall be ſatisfied before the King, for regularly whenſoever the King is intituled to any fine or duty by the ſuit of the party, the party ſhall be firſt ſatisfied, as in a Decies tantum. And ſo if in an action of debt, the Defendant deny his deed, and it is found againſt him, he ſhall pay a fine to the King, but the Plaintiff ſhall be firſt ſatisfied: And ſo in all other like caſes: And ſo it is in Bills preferred by Subjects in the Star-Chamber, their coſts and damages (if any be) ſhall be anſwered before the Kings fine, &c. Co. L. 131. b.

Diſtreſſe. *Sile vic^e (ou ſes officers, ou aſcun auter) diſtreine pur dett le Roy, &c. les beaſts del carue ou barbitts (lou ils poient trowe auters); Ou priſt exceſſive diſtreſſe; ou ameſne le diſtres trope longe; le party greine poet auer attachment ſur le Stat. vers iiel Viſcounte ou officer,* &c. Fitz. 174. b. c. *ou le party poet auer action de treſpas vers le Viſcounte,* Fitz. 90. b. *Vncore vide* Fitz. tit. Avowry. 239. *que diſtreſſe ne ſerra dit exceſſive, ou le Roy eſt party.*

The Sheriff and his Officers may diſtrain for the Kings debt, &c. in the Kings high-way, or in the common ſtreet, 52 H. 3. c. 15. Fitz. 173. f. 43 E. 3. 30. Fitz. Avow. 87. & Fitz. 173. f.

And yet if they be the beaſts or goods of a Parſon, &c. they may not be diſtrained in the Kings high-way for the Kings debt, 9 E. 2. c. 9.

Neither may the Sheriff, nor any other Officer, diſtrain in the glebe of Parſons, nor in the antient fees of the Church. Ibid. & Fitz. 173. e.

Et ſi aſcun vic. ou auter perſon fuit contrary al ceo Stat. dong. il que eſt iſſint diſtrain pr. ſuer bre. ſur ceo Stat. Commands. le vic. &c. *quod non diſtringat,* &c. *& que ſil ad diſtrain al contrary, quod ſine dilatione relaxet,* &c. *Ou le party que eſt iſſint diſtrain pr. an. action ſur ceo Stat. vs. le vic.* &c. Fitz. 173. e. f.

M. l'officer le Roy poet bien Enter in aſcun perſonage per ſoiſer biens forfetts: Et ſi le Parſon ſoit malage l'a officer pr. ſoiſer ſes biens.

Alſo they may diſtrain for the Kings debt in the poſſeſſions of Eccleſiaſtical perſons (not being the antient fees of the Church in the time of King Edward the ſecond) 9 E. 2. c. 9. Fitz. 173. e. 174. a.

And by the book 27. aſſ. p. 66. the Kings Officer may diſtrain for Iſſues in the Church or Sanctuary: ſcz. If he can find no goods elſewhere to diſtrain, Br. Diſtreſſ. 35. Co. 5. 92.

But they may not diſtrain or take for the Kings debt (or for any iſſues or amerciaments due or forfeited by any Eccleſiaſtical perſon) any

any goods which do belong to the Church, or Parish, and if they do, the Churchwardens may have their action against the Officer for the ſame.

They alſo for the Kings debt, may carry or drive the diſtreſs out of the County (as it ſeems) See Fitz. Barr. 275. & Diſtreſſ. 16. And yet they may not drive any diſtreſs too far. See the Statute of 28. E. 1. cap. 12.

Alſo they may ſell (after fifteen dayes) a diſtreſs taken by them for the Kings debt. See Br. Diſtreſſ. 32. 40. & 72. & Stat. 51. H. 3. ſc. if the debt be not ſatisfied, &c. in the mean time.

And ſo of a diſtreſs taken for the taſk or rb; or for charges of the Knights of the Parliament. 8. R. 2. & 11. H. 4.

But for the Kings debts, as alſo for fines, iſſues, and amerciaments, the Sheriff is not chargeable or accountable for the ſame, neither may he diſtrain for, or otherwiſe levy the ſame untill he ſhall have warrant to levy the ſame, by Eſtreats, &c. under the Seal of the Exchequer, and thoſe Eſtreats ſhall mention how much every one is to pay; and by thoſe Eſtreats the Sheriff is to receive them, and to make acquittances or tailes, according to the ſaid Statute of Weſt. 1. cap. 19.

Queux perſons, & terres, ſerra chargeable al payment del Debts le Roy.

Nota que Debtors le Roy (ſur ſpecialty) lo. Corps, terrs & biens, & lo. heires executors, admin. & aſſignes, & auxi les poſſeſſions al bien. le mort, ſont chargeable. Co. 11. 93. plus hivc, 25.

M. ſi un joynt. in fee. ſoit in Debt al Roy, & dey. al contra par ſ. le ter in mains dl Servivo. Plo. 32 in Co. L. 189.

Le heire del Debtor le Roy, (que ad terre per diſcent, ou done ſon ancr) ſerra chargeable, See hic tit' Statute ſtaple. 38.

Iſſint le heire in taile eſt chargeable. See ibid.

Debtor le Roy dey. ſa. heire ou Executor, proces ſerra fuit vers ſes feoffees, de reſpond. & ſatisfyer le Roy. Dyer 160.

Terres del Debtor le Roy, vient al maine, de divers perſons, ils ſerra touts charge; & tout le terre, &c. *& cheſcun parcell del ceo, ſerra entierment & nemy ſeveralment charge.* 33. H. 8. cap. 39. P. Account' 9. & Co. 7. 20. b.

13. Eliz. 4. *Queux Accountants, ou Officers aux a lour terres*, &c. *liable al payment del Debts le Roy, in tiel manner come ils uſſent eſtre lye al roy per obligac'*, &c. vide Statut' 13. Eliz. c. 4. P. Accountants 29.

Auxi c. perſons enſuants ſont accomtable al Roy. ſc.

1. *Cheſcun*

1 *Chescun que prist ascun bie. le Roy.*

2. *Chescun que enter en ascun biens le Roy per tort.*

3 *Officers le Roy, que dispose son Treasure sa. garrant south le Grand ou Privye Seale.*

4 *Feasors de illoyal garrant.*

5 *Receivers sa. loyal garrant.*

6 *Cey. que est instrument, en meanes per que le Roy ad perde.*

7 *Stewards de Mannors ou Courts le Roy, que assesse petit fines, & prent bribes.* Co. 11. folio 90. &c.

Si ters d'ascun accomptant al Roy; Ou si ascun argent biens ou chattels personals de Roy veigne al mains d'ascun subject (per matter de Record, ou per matter en fait) le terr del tiel subject est charge per ceo, & subject al seiser le Roy, en quecunq; mains que il. veignont apres. (soit il per discent, ou per purchase, ou autrem.) C. le Roy poet an. cel seisie en les mains del Debtor, & per mesme reason en les mains de chescun que vient ejus defont. luy, Quia Nullum tempus occurrit Regi. Cromp. author. des Courts. 106.

Accountants purchase terres in le nosme de autres persons, ou serra liable al payment de debt le Roy. P. Accountants 31. Co. 11. 90. &c. Ibid.

Trove fuit per Inquisition, que Custome, que fuit in debt al Reyne purchase terr ove argent le Reyne, & pur Covin al estate d'estre fait a son use, ceo fuit seisie en mains le Reyne tanque, &c. Dyer 160.

Le Statute de Accountants fait. 13. E. c. 4. ne extend, al terres del Enfranques queux ont collection del subsidies ou Tenths, P. accountants 33. Ibid.

Ne extendera al ascun Accountants, sinon que son annual receipt, collection, ou charge, excede la Summe de 300. l. P. ibid. 34.

Nec extendera al ascun Accountants, queux ne sont de faire presens payments, &c. P. ibidem. 35.

Nec entendera de charger ascun Vicount, Escheator ne Bailife de libertie, ne lour terre, &c. pur ascun chose touchant lour Offices; ne pur asc' money per eux receive, per reason de lour Offices, P. ibidem 36.

Uncore chescun de ceux persons, & lour terres, serra liable al payment del debts le roy, in manner come ils fuer' chargeable devant.

Mes si accountant le Roy, possesse dun terme pur ans, vend ceo bona fide *& le vendee enter, adjudge que cest lease ne serra extendable ou liable al debt le Roy, car forsque chattel: Auxy Receiver, ou auter accountant in debt al Roy, ne serra in peior case queno felon ou traitor, queux apres felonie ou treason, & devant conviction, poient vend' bona fide pur lour sustenance,* &c. *lour chattels real ou personal.* Co. 8. 171.

Si

Si Debtor le Roy muruſt, le Roy ſerra primes pay ſon debt. 9. H. 3. c. 18. See Br. Prerog. 71. & hic poſtea execution ſ. Stat.

Le executor & adminiſtrator del debtor le Roy, ayant aſſets, ſont chargeable, al debt le Roy, &c. 33. H. 8. c. 39. *Et ſemble que le Common ley ſuit iſſint, devant ceo Stat°* Br. Prerog. 126.

40. Aſſ. p. 36. *Si un Joyntenant ſoit debtor le Roy, le poſſeſſion de ſon Compagnion ne ſerra charge, mes tantum le poſſeſſion que appertaine a luy que eſt le debtor: uncore per* Thorpe, *ſil un nad rien's lauter reſponder.* Quære.

Baron & feme ont terme, & le baron receiva les deniers de Sr. H. Sp. *que fuit atteynt (per que les dits deniers perteyne al Roy) & puis le baron dey. le Roy ſur ceo matter trove, amera le Leaſe le baron & feme in execution,* &c. 50. aſſ. Pl. 5.

Br. Diſtr. 72. *M. le Roy ne poit diſtraine pur debt le baron, ſur le dower la feme, ne in ſa Inheritance, ne in le joynt eſtate ou purchaſe que el auer one ſon baron: mes ſi le baron ſuit indebt al roy devant le coverture, la le roy poit diſtraine in le dower del feme.* Vide Fitz. 150. q. & 151. Co. L. 31.

Vide le caſe Sr. Will. Candiſh *Treaſurer del Chamber, il ceaut. ſeiſie de ter, Cov. d'eſtroyer ſeiſie de ceo, al uſe luy meſme, & a ſa feme, & le heirs le baron, & dey la feme priſt ant. baro. & proces ad Computandum iſſuiſt us. le 2. baro. & la feme (quia retorne terr tenants in jure uxoris) de accompt. par le arrerag. due al Royne,* &c. *Et fuit adg. que ib. accompt. quia terr tenants de ceo eerr de que Sr.* W. Candiſh *fuit ſole ſeiſie aps. l'office a luy grant. M. ſi la feme uſt eſtre joynt purchaſ. ds. le Courts & dent l'office grant, ceo terr ne ſerra liable.* Dyer 224. 225. & Plo. 321.

Auxi vide Fitz. 45. 46. *Que ſi le viſcont ad proces hors del Exchequer a lenier les debts le baron, que il doit al roy, ou ſi le viſcont ad proces hors del auter court de lenier certaine debts due per ſa baron al auter perſon, uncor le viſcount ne doit diſtrainer in le terres que le feme (apres mort ſon baron) tient en Dower, ou de joynt purchaſe ove ſa baron, ou de ſa inheritance demeſne.*

Et ſic vide que le roy, ou ſes officers (ſur proces, &c.) *poient diſtraine pur det due al roy: Et ſi home ſoit indet al roy, quel debtor ad tenants que doient rent a luy, le roy poit faire leny ſon det ſur ceux tenants (ſc. de lo. biens) & ceo ſerra bone barre pur eux vers lour ſeignior, que eſt debtor al roy, & que ils ad ceo pay al roy per leny,* &c. 21. H. 7. 12. Br. Prerog. 39.

Nota debtors le roy ferra gree al roy pur lour det in le Eſchequer, & ne nemy in Banco, nec in aſcun auter court (comme ſemble) Vide Fitz. Decies tantum 12.

More per le Stat. 33. H. 8. cap. 39. *Suits per debts le Roy, & auxi Compoſition pur eux (come ſemble) pt. eſtre en les Court's ou il. ſont due, ſc. en les ſeveral Offices ou Courts al Duchy, Court de Augmentations, & Court de Gards,* &c.

Deniers baile in banco, ou in auter Court, poit eſtri ſtay & arreſtus la, pur det le roy. ibid.

Si deux ſont indets al roy, & le roy releaſe al un de eux toute dets, cio ne ſeruera lauter. 2. R. 3. fol. 4. Br. Prerog. 124.

CAP. II.

Iſſues.

Iſſues.

The Sheriff ſo ſoon as he is made Sheriff is accountable to the King in the Exchequer for all manner of Iſſues and profits of the County, which run under the name of Vicounties. 2. Hen. 7. fol. 6. yet he is accountable for theſe in a Summ in groſs. See Keil. 173. hic cap. 9.

But for other Iſſues the Sheriff is not accountable, nor ſhall be charged therewith, until they ſhall be Eſtreated under the Seal of the Exchequer, and the ſame Eſtreats delivered to the Sheriff: Neither ſhall the Sheriff levy any ſuch Iſſues, without ſuch warrant. Vide Star. 27. Ed. 1. c. 2.

And then by his Office he is (upon ſuch Praeels out of the Exchequer, &c.) to gather up, and to bring into the Exchequer ſuch Iſſues and profits, &c. Star. de finibus. 27. E. 1. cap. 2. 42. E. 3. c. 9. 2. H. 7. fol. 6. & Br. Patent. 105.

Exitus (Iſſues) pluraliter uſurpatur, & Redditus annuos, vel alia terrarum commoda ſignificat. *Cow. Index.*

The word Iſſues (in our Law) is ſometimes uſed for the profits growing to the King, &c. as an Amerciament, Fine, Forfeiture or Puniſhment; aſſeſſed upon Jurors, &c. for default of appearance, &c. And ſometimes for the profits of Lands or Tenements themſelves.

And ſo the word Iſſues (in our Law) ſeemeth to be taken three ways, or in three manners.

Firſt, for ſuch Iſſues and Profits of the County, which go under the name of Vicounties, of which ſee hic antea cap. 3.

Secondly, For the Iſſues and Profits of the Lands themſelves: as where the King is entitled to have the Lands or profits of Lands of perſons Attainted, or Outlawed, or for Alienation without Licence, for Alienation in Mortmain, for a condition broken, or the like: Of this alſo ſee hic antea, cap. 6, & 7.

Thirdly, for Iſſues to be loſt for default of appearance (ſc. by Jurors, or by the Tenant, or Defendant, &c.) of which here: but theſe laſt the Sheriff may not levy, until they be Eſtreated to him, &c. for without warrant he may not levy the ſame.

Iſſues per de per default.

Iſſues ſet and returned by the Sheriff, upon the Defendants, or Jurors, ſhall be forfeit to the King, by reaſon of the default of appearance, and ſhall be levied by the Sheriff, and of theſe, See hic poſtea Retorne of Iſſues. Cap. 89. 90. & 91.

Iſſues

Iſſues forfeited by witneſſes for default of appearance. See the Stat. 12. E.2. cap. 2. But this ſeemeth to have been in Caſes where the Deed was denyed, and then Proceſs went out for them, and that they were to be joyned with the Jury, &c. Vide Fitz. Proceſs 17. 128. 141. 181. & 5. H. 7. fol. 8. & Co. 1. 6.

And if ſuch Iſſues Returned upon any man be never ſo great, the Party hath no Remedy.

Finch. 86. *Sur Grand Cape, le terr ferra priſe en mains le Roy, & le Vic. ferra Accomptable pre les Iſſues dl dit terr. vide Fitz. Amerc. 1. & Diſceit. 33. Stamf. de Prerog. 84. b. Co. 7. 38. Auxi quant aſen. action Real (ſc. de plee da terr) eſt part, & le tent ap. & aps. fait default, un petite Cape iſſer de ſeiſer les terrs en mains le Roy, &c.*

Et q. choſcum cape eſt al uſe dl Roy t'mes dl. ley. tit. Cape.

Et ſemble que en tous Caſes, ou terr eſt ſeiſe en mains le Roy per le Vic. que le Vic. ferra charge dl. Iſſues & profits dl. ceo, de le temps que le terr. fuit iſſint ſeiſie & q. il accompt. de ceo in le Exchequer ſc. dl. Iſſues trov. le Default, tanq; judgement per le demandt. f. 345. vide Fitz, Diſc. 46. & N. br. 51. m. vide hic. cap. 62. Que ſur Grand Cape, nient ob. ex parole, cape in manum noſtram, &c. le Vic. ne pt. ſeiſ. le terr. in mains le Roy, &c. Vide N. Br. 51.

And yet as in perſonal actions, the Proceſs of Diſtringas, is but for the taking of Pledges of the Defendant for appearance: See the Proceſs by Cape in Real Actions, is but for ſeiſing of the Land for the ſame purpoſe.

What is contained under the name of Iſſues. See more hic poſtea, Return of Iſſues, cap. 89.

How much the Sheriff muſt Return in Iſſues upon the Defendant, &c. Ibidem.

What Iſſues he muſt Return upon Jurors, ibidem.

The Sheriff ſhall levy no Iſſues without warrant: ibidem.

Iſſues forfeited, and upon whom, and what Lands they ſhall be levied, &c. ibidem & hic poſtea tit. Forfeiture.

If the Sheriff ſhall Return a Juror, in Iſſues, which is not ſufficient, he is puniſhable, ibidem.

So if the Sheriff ſhall Return any Iſſues upon any Juror, or Hundredor, which was not lawfully Summoned, &c. ibidem.

Sometimes alſo there be Iſſues ſet by the Court, as an Amerciament, Forfeiture, or puniſhment for default of appearance of Jurors: Vide Br. Amerc. 35. Fitz. Eſſoyne 123. & Aſſiſe, 65. Br. Amercement, 55. & 60. & Jurors, 15. 18. 25. & 33.

No Officer or other perſon ſhall Collect or Levy any Iſſues Eſtreated, but only of the right perſon charged with the payment of the ſaid Iſſues, &c. 27. Eliz. cap. 7. hic cap. 85.

If the Sheriff ſhall Retorne the Iſſues of any Recogniſor, Pledge, or Mainpernor, which at the time of the Retorne, was not ſufficient to anſwer the ſaid Iſſues and Amerciaments, the Sheriff himſelf ſhall anſwer, and ſhall be therewith charged in the Exchequer, 27. Edw. 1. P. Sheriffs 19. 27. Ed. 1. c. 2.

Iſſues de terres.

Apres mort del tenant le Roy in Capite, le Roy avera primer ſeiſin, ſc. les Iſſues de tents ſes terres, &c. vide Statut. 17. Ed. 2. c. 3. & Co. 8. 172. & 9. 132.

De quel temps Roy avera les Iſſues del terres le heire ſon tenant, vide Co. 4. 59. 126. & 8. 170.

De quel temps Roy avera les Iſſues del terre ſon tenant, que alien ſans licence, &c. vide hic tit. Fines. Co. 8. 170. Stamf. de prerog. 84.

Ceſtuy que happa Livery extra manus Regis, *que ne doit aver Livery, il reſpondera les Iſſues al Roy arere*, vide Fitz. N. B. & Br. Iſſues 19.

Qr. le Roy ſeiſie per reaſon de Eigne droit on title, la Roy ſerra reſpond. des Iſſues, del temps de ſon title droit en intereſt primes accrue, &c. ſee Fitz. Gard. 1. & Judgement 69. Stamf. 84. Co. 8. 170. *Coe. on le Roy enter pre Conditio. enfreint, on pre Mortmain, &c.*

M. qr. le Roy eſt intitle ou ſeiſe aſcum ters, Nomine diſtrictionis coe. in caſe de Alienat. ſa licens per tout in capite, en de mariage de ſa widdow ſa. Licence: Ou jure Protectionis coe. in caſe de Ideot, la le Roy p. reſpond. dl. Iſſues, m. dl. tps. de ſon title trova per Office, &c. Co. 8. 170. Stamf. 84. *Auxi Guant ho. tient dl. Roy in Chivalry, & ſon Homage ou ſon Relief ſoit avere, & Diſtreſs iſſera hors dl. Exchequer ad reſpond. nobis de replevio, vel ad faciendum Homagium, & e. en cel Diſtr. il perdera Iſſues, &c.*

Iſſues de terres de felons, fugitives, & utlawes, ſee hic fol.

Tenant le Roy deny ſeiſie, & eſtraunger abate in part des tenem'ss del heire, le abator ſerra charge ous les Iſſues del ceo, & nemy le heire Br. Iſſues 20.

Ou le Roy eſt a'eſtre reſpond. dl. meſne Iſſues & Profits, Priſes d'aſcum ters, queux ont deveigne almains de divers perſons, pius le title le Roy prim. a ceo accrue, la cheſcum de eux que ont ſeveralment priſe les profits, reſpond. pre ſon temps; m. un ne reſpond. pre tout. Fitz. Forfet. 18. & Stamf. de prerog. 84.

Ou pardon de intruſion excuſer Iſſues, & ou nemy. vide Br. Intruſion 21.

But the Sheriff (or other Officer) ought not, at this day, to ſeiſe any Lands into the Kings hands, until after office found, &c. See hic cap. 7. Co. 8. 169.

Meane rates.

By the Statute made 28. E. 3. c. 4. it is ordained that of Mannors, Cities, Boroughs, Towns, Hundreds, Franchiſes, and all other Lands and Tenements whereof profit doth ariſe from time to time through the year (as of Mills, Herbage, Tolle, and Profits of Courts) every Officer which ſhall ſeiſe ſuch Lands and Tenements to the Kings Uſe, 28. Ed. 3.

Uſe, and after ſhall make Livery thereof to the Heir (by the Kings Commandment out of the Chancery) yet they ſhall be bound to anſwer to the King for the rate and portion of the time, according to the old
Plus hic c. 14. courſe of the Exchequer.

M. meſme le Stat. done les Rents al eux que ſue Livery, Guant. le Rent, jo. viet, com. q. ceo veigne le prochein jo. aps. lo. livery ſue. Stamf. de Prerog. 80.

CAP. 12.

Amerciaments.

THe Sheriff, is alſo accomptable to the King for, and upon Proceſs, &c. is to gather up, and to bring into the Kings Exchequer, all Amerciaments, and Fines, which ſhall be ſet or aſſeſſed (as a Penalty) upon the heads of offendors, againſt the King, in any of his Courts. Plus hic c. 14.

An Amerciament is properly a penalty Aſſeſſed upon an Offendor by his equals, or by the Countrey.

Co. 8. 59. b. Fitz. 75. h. k. And this word Amerciament, is called in Latine Miſericordia, and in Engliſh Mercy; ſo as by the name and nature of this word, a man is not to be puniſhed ſo much as he or his offence deſerveth, but that the Amerciament ought to be leſs than the offence; for it cannot be properly ſaid, that a man hath mercy ſhewed to him, if he ſhall pay or be charged at more than his offence deſerveth; and this is by the Common Law, which is a Law of mercy, and by the Law of reaſon, a principal ground of our Common Law. *Amerciament.*

And hereupon alſo it is, where two or moe are to be amerced, though for one joynt offence, yet their amerciaments ſhall be ſeveral, for that one of them ſhall not be charged or amerced for the offence or default of the other, but that they ſhall be all equally amerced and charged, Fitz. 75. g. h. k.

Vide Co. 8. 39. b. & 11. 43. b. And if there be divers demandants amerced in a plea reall, for their nonſuit, the courſe of the Court of Common Pleas is to make the Eſtreats of the amerciaments, ſeverally upon them, and to deliver the ſame Eſtreats to the Clerks of the Aſſiſes, who delivers them to the Corroners, and they uſe to Affeire the amerciaments (ſc. to aſſeſs the ſums upon every one) ſeverally, Fitz. 75. k. 76. a.

And ſo they uſe to do where there are divers defendants amerced, Fitz. 75. i.

And thoſe Eſtreats do rehearſe and ſhew the cauſe of the amerciaments, &c.

9. H. 3. 14. 3. E. 1. 6. Co. 8. 39. b. 40. By the Statutes of Magna Charta, cap. 14. & Weſtminſter 1. c. 61. Amerciaments ought to be aſſeſſed, (taxed, moderated, or affeired) *per* *Amerciaments.*

per Pais, ſcz. per Pares; by the oaths of good and lawfull men of the ſame Vicenage or County. See Co. L. 126.

But theſe Statutes are not to be intended of fines aſſeſſed by the Court upon any offendors for any contempt, &c. Nor to any iſſues returned upon any man, for any default of appearance.

But they are to be underſtood of amerciaments upon the Plaintiff or Demandant, or upon the Tenant or Defendant in actions reall or perſonall, (as if the Plaintiff or Demandant be nonſuit; or if Judgement be given againſt the Tenant or Defendant, or upon the Plaintiff, Quia non eſt proſecutus, or pro falſo Clamore, or the like) or upon the Painpernors, for that the principal party doth not appear, &c. in ſuch caſes the Juſtices never aſſels any amerciament, but by the former Statutes the amerciaments ought to be aſſeſſed per Pares; And the Court in ſuch caſes enters, Ideo in miſericordia, generally, without taxing or aſſeſſing any ſumm in certain. Vide Co. L. 126. 127.

And then the Clerk of the Warrants in the Common Place, doth make Eſtreats of theſe amerciaments, and delivers them to the Clerk of the Aſſiſes within every circuit, to deliver unto the Coroners in every County to affeire id eſt, to aſſels) the amerciaments, ut ſupra.

And ſo for amerciaments upon Inditements or Preſentments, for not repairing of a bridge, or high-way, or the like; ſuch amerciaments ought to be aſſeſſed per Pares, &c.

But amerciaments of every Officer or Miniſter of Juſtice, muſt be aſſeſſed by the Juſtices of the Court where the cauſe depends: and this is called an amerciament Royall, as where the Sheriff, Coroner, or other Officer of the King is amerced by the Juſtices for any his abuſe or miſdemeaning in his Office: vide Co. 8. 40. Br. Amerce. 25. 33. & 50. & *t'mes del Ley.* 2. H. 7. 7. a. Fitz. grt. 33.

Sr erronious judgement done en Court baron, bre. def. judgement fuit pt. en le Court de Common Pleas, lon le ſuitors fuer amerce, per ceo que ils ſont Judges la, & le amerciament de les Suitors fuit aſſeſſe per les Juſtices. Fitz. Amerce. 19. & liber. Intrac. tit. faux Judgement div. 13, 14.

Queux perſons ſerront amerce, queux nemy.

Peeres del Realm, & Eueſques poyenteſtre amerce. Co. 8. 39. 40. Br. Amercement 2. 23, 47, & 48. & Mag. Chart. c. 14.

M. peeres dl Realm ſerra amerce per Pares, ſc. *per les Barons dl Eſchequer, ou per les Juſtices dl Banco Regis, ou dl Common Bank, lou il. ſont Nonſue.* Mag. Chart. c. 14.

Touts Eccleſiaſtical perſons pt. eſtre amerce (ibid.) *& tiel amercement ſerra niet ayant regard a lo. lay fee, ne a lo. benefices, m. ſolonque le treſpaſs.*

Feme couert ſerra amerce. Br. 9. Fitz. Amercement 14.

Mes Enfant ne ſerra amerce, pur imbecillity del Age, mes l'entree eſt, Ideo in miſericordia, ſed perdonatur quia Enfans. Co. 8. 61. Br.

61. Br. 43. Fitz. Amercement 10. & 14. vide Co. L. 136, 137.

Jurors ſerra amerce, &c. Br. 30. 46. 55. 60. 68. & Co. 8. 41. & 11. 43.

Playntife on demandant ſerra amercie in diuers Caſes, & pur diuers cauſes: vide Co. 8. 60. 61. & Br. 3. 6. 7. 11. 27. & 31. & hic antea.

Deffendt. on tent ſer' am'ce in din's caſes: Co. 8. 61. Br. am'c. 6. 8. & hic ſupra.

On Pledges ne fa. Amerce, com. le plt. ſoit Nonſuit; Et on les pledges ſerra amerce. Co. 8. 61.

On Mainp. ſerra amerce, on ney. Co. 8. 39.

Enqueſt ſerra amerce per concealm. Stat. 3. H. 7. c. 1.

Home Summon al Parliament, que abſent luy meſme, ſerra amerce, 5. R. 2. c. 4.

Sig. que diſtreyne ſon tenant per un ſervice niet due, ſerra amerce. 52. H. 3. c. 3.

Queux perſons ſerront amerce, queux nemy.

Cey. que priſt outragious diſtreſs, ſerra amerce. 52. H. 3. cap. 4. hic cap. 125.

Cey. que attache, on arreſt aſcun. deins ſon liberty (que ne tiet de ley) de reſponde. ſur contract, ou treſpas, &c. fait hors de ſo. juriſdiction, ſerra amerc. 3. E. 1. c. 34.

Cey. que aprove Common, & ne leave ſufficient al Commoners ſerra amerce. 20. H. 3. c. 4.

Bakers & Brewers que n'obſerve l'aſſiſe fa. amerce. 51. H. 3.

Cey. que Eme, ou vend, per meaſures niet ſigne, &c. ſerra amerce. 51. H. 3.

Cey. que deforce, &c. ſeme de ſa Dem. ſerra amerce. 20. H. 3. c. 2. & 13. E. 1. c. 4.

Un ville, Hundred, ou Countie, amerce per eſcape de felon. 3. E. 1. c. 9. & 3. H. 7. 1. See hic c. 14.

Co 11. 43.

3. H. 7. c. 1.

Nota que amercements, & Fines in aſcun Caſes ſerra impoſe ſur diuers joyntment; ſcz. aſcun foits ſur un entier County; aſcun foits ſur un Hundred; & aſcun foits ſur un ville, &c. ceo pur Eſcape dun Murderer, &c. mes ceo eſt pur le incertenty des perſons, & pur infinitenes del number. Vide Fitz. Coron. 290. 302. 304. 316.

Auxi le plaintife in aſcun caſes, poet eſtre diuers foits amercie: ſcz. quant la eſt forſque un plaintife on demandant, & diuers defendants. Co. 8. 61.

Mes

Mes nul ſerra Amerce, mes pur reaſonable cauſe; Et accordant al quantity de ſon offence. 9.H.3.c.14.3.E.1.c.6.P.Amerc' 1.

Quel terre ſerra charg' al Amercement.

In an Aſſiſe the Plaintiff was Nonſuit, when the Jury came to give up their verdict, and was amerced, &c. and by the opinion of Newton, the land which the Plaintiff had the day when he found pledges, ſhall be chargeable to the Amerciament, but Wilbie held otherwiſe: ſc. that the land which he then had (when he was Nonſuite, or was amerced) or which the Plaintiff ſhould afterwards have, was only chargeable: Quod Nota, that the land which the Plaintiff ſold in the mean time between the Amerciament, and the pledges found, ſhould be diſcharged: 22. aſſ. p. 32. Br. Amercement 37. vide Co. L. 102. b. that the land only which the party had at the time of the Amerciament aſſeſſed, ſhall be charged; and that ſhall be charged into whole hands ſoever it ſhall come.

Vide hic poſtea (*Returne de Iſſues ſur Iurors*) *ſur que tiels Iſſues ſerra leuy.*

But Sheriffs ſhall not be charged with (nor accountable for) any other Amerciaments, Iſſues, or Fines, than thoſe for which they ſhall have Eſtreats or Warrant, for to levy, under the Seal of the Exchequer. Neither are they to gather or levy any amerciaments, &c. until they have received ſuch warrant. Vide Stat. 27. E. 1. c. 2. & 42. E. 3. c. 9. Cromp. 203. 204. & 211.

And yet the Eſtreats of the Juſtice of Peace is ſufficient warrant to the Sheriff to levy ſuch ariſing before them. See hic c. 122. & 90. Plus hic c. 14.

CAP. 13.

Fines.

Fines.

THis word Fines (or à fine) hath divers ſignifications; As firſt, for an aſſurance or certainty of lands, &c. 2. A Fine is a puniſhment certain which groweth expreſly from ſome Statute. But to the purpoſe in hand, a Fine is moſt commonly that which is aſſeſſed or ſet upon an offendor in ſome Court of record by the Court or Judge there as a penalty for ſome contempt or offence, and which the offendor doth give for and in ſatisfaction of his offence, default, or contempt: See Co. 8. 38. 40. 41. & 60. & Co. L. 126.

Le difference perent. Amerciament, & tiel fine eſt, Que ceo que eſt aſſeſ. per le Court, ſur vic. coroner, ou Officer del Court, eſt appel Amerciament (& ney un fine) M ſur eſtrang. al Court per miſdemeanors eſt appell fine, & ney. Amerciament. Co. 8. 40.

Fines per eſcape de felons, Such fines are uncertain, and to be aſſeſſed by the Juſtices. Vide hic c. 14. Alſo

Alſo if any of the Kings tenants in Capite (be it in Knights ſervice, or ſozage in chief) do alien without the Kings licence, any part, they ſhall pay a Fine: 9. H. 3. 32. & 17. E. 2. 7. Stamf. de Prerog. folio 29. 30. And the Kings Officer may ſeiſe the land for the Fine, Fitz. 175. a.

Vuc. per tiel alienation ſa. licence, le title dl Roy Coviens eſtre prim. trove per Office, ou autem. de appeare ſur Record.

Et nota que ſi title le Roy appeare in aſcu. manner ſ. Record, il eſt cye bon, ſicome uſt eſtre trove per Office: Sicome ſi tent le Roy alien ſa. licence, quel alienation appearer a per un fine levy, ou per un fait Enroll, ou auter matter de Record, in ceux Caſes, ſi un auter Record ſerra trove, que prover c. ters deſtre tenus dl Roy in capite, ſur ceux deux Records enſemble, Proces ſerra fait hors us. le perty (per un cire facias) de veuer & mre. per que il ne payer ou ſerra un fine al Roy per le alienation. 50. aſſ. 2. Stamf. de Prerog. 55. 56.

And by the Statute made 2. & 3. E. 6. c. 34. it ſeemeth that Sheriffs ſhall be accountable for all Fines for Alienations and Intruſions made by the Kings tenants, &c. within their County (as well as for Fines impoſed upon offendors for contempts, &c.) and upon Pzoces may ſeiſe the lands for the Fine.

But for ſuch Fines aſſeſſed or impoſed upon offendors, as alſo for the profits of the lands forfeited to the King by his tenants in Capite, upon the alienation without the Kings licence, &c. the Sheriff is not chargeable; Nor is it ſafe for him to medle to levy the ſame (notwithſtanding any office, or other matter of record, found thereof) untill he hath received Pzoces or other Warrant under the Seal of the Exchequer, to levy the ſame; and then when he hath ſo levyed them, he is chargeable and accountable for the ſame, and may ſeiſe the lands for the Fine.

Principium finium pro Alienatione, vide Br. Alienat' 6. & 19. & Co. 2. 80. & Stamf. de Prærog. tit. Aliena. ſa. licens & Co. L. 43. a. b.

Per le com. ley, ſi cey. que tiet in Capite uſt alien le frank-tenement ſa. licence, que le terr fuit forfeit. M. are per le Stat. 1. E. 3. c. 12. le Roy ne ſeiſera le ter alien ſa. lice. m. auera fine per ceo. Stamf. de Prerog. fol. 29. & Finch. fol. 41.

Pur queux Alienations ſans licence, le tenant feraſine, & pur queux nemy. Fines pur vide Br. Alienation per totum. Fitz. 175. a. & Stamf. de Prerog. tit. *Alienation.* Alienat. ſa. licence.

Auxi per le Stat. de 32. H. 8. c. 1. *fines per Alienations ſerra pay ſur common recovery, cy bien come ſur fine, ou feoffment.*

Et auxi ſerra pey ſur Deviſe, ou done per volunt. Br. Aliena. 37. & Stamf. de Prerog. fol. 31.

M. fine ſur Releaſe, ou auter Releaſe, ſemble d'eſtre nul Alienation, & per ceo nul fine eſt due al Roy ſur ceo. Br. Aliena. 31.

Quantum ſerra pay al Roy, pur fine ſur Alienation ſans licence, &c. ſcz.

Le { *Fine de aver Licence de Alienters tenus in Capite, neſt forſque le tierce part del valne (del terre) per an, le Tenth deduct.* Weſt. 81.
Fine per alienation ſans licence, eſt le value pur un an.
Fine pur intruſion, eſt le value del terre pur un an. Br. Alienation 29.

Sur tots licences de alien Spiritual terrs (coe. Appropriations d'eſgliſes, &c.) *le fine al Roy, eſt le value per quatuor ans.* Weſt. 81.

Fine per alien temporal terr in mortmaine, eſt le value per 5. ans ibid. *M. per* Br. tit. Aliena. 29. le fine eſt ſeq. 3. ans value.

Et ſi le Alienation ſans licence ſoit troue per office le roy auera les iſſues del terre à tempore Inquiſitionis captæ, & non ante. Br. Alien 29. *le reaſon ſemble, pur ceo que icy, le Roy neſt intile forſque* nomine Diſtrictionis.

Iſſint eſt lou le widdow le Roy (ſcz. *de ſon tenant*) *ſa marie ſans licence le Roy.* Vide Stat. Mag. Chart' c. 7. & 17. E. 2. c. 4. Fit. Gard 1. & Prerog. 27. Stamf. de Prerog. tit. women. Fitz. 174 c. d.

Sur tots licence de marriage, dl widdow le Roy, le fine eſt le 3. part de le value de ſa Dower, par un An. Weſt. 81.

Snr tots Pardons de tiel widdows, que ſa marry ſa. licence le Roy, le fine eſt tout le value de ſa Dower per un An. Ibid.

Et lofficer le Roy (ſur briefe a luy direct, poit in ceux caſes ſeiſer le terre pur le Fine, &c. Fitz. 174. c. 175. a. 225. b. & 226. c.) *Et tiel briefe poit eſtre direct al Eſcheator, ou al vic'* Fitz. 175. a.

Fines pur Contempts & Offences;

Fines pur Contempts. *Ceux ſerra aſſeſſe & impoſe, in Court* (vide hic cap. 14.) *Et nul Court que neſt de record impoſer Fine.* Co. 8. 38. 60.

A cheſcun Fine, Impriſonment eſt incident, &c. ſc. *quouſque le Fine ſoit pay,* Co. 8. 59. & 11. 43.

In tots caſes ou choſe eſt prohibite per aſc. Stat. l'offend. ſerra fine. Co. 8. 60.

Snr ch'ſe. Inditement de mayhem, ou auter treſpaſs ou offence, ſi l'offend. ſoit de ceo attaint, il fera per ceo un fine al Roy. Litt. 194.

In cheſe. plee de treſpaſs, ou auter action, ou l'offence eſt lay d'eſtre vi & armis, le deffs fera fine, ſi judgement ſoit done vs. luy. Co. 8. 59.

Le Plt. per doble vexation ſerra fine, come ſi un ſue auter in deux Courts per meſme le cauſe. Co. 8. 60.

Pur queux cauſes Fines ſerra impoſe, &c. vide plus Co. 8. 3. 8. 59. 60. & 11. 43. Br. tit' *Fines pur contempts* per totum. Cromp. de pace. 159.

On

On le fine ſerra fait al value del terre del offendor (que ſerra ceo) Br. *Fine pur Cont'* 42. Fitz. Paine 2. 3.

Juſtices of Peace ſhall deliver to the Sheriff Eſtreats indented thereby to levy the Fines and Amerciaments aſſeſſed before them. Stat. 14. R. 2. 11.

All Fines, and Amerciaments, aſſeſſed or impoſed by the Commiſſioners of Sewers, upon any offendor, ſhall be to the uſe and behoof of the King, by the Statute 23. Hen. 8. cap. 5. But ſince the Commiſſion for Norf. and Suf. are excepted, by the Statute made 7. Jac. c. 20.

And by the Statute 13. Eliz. cap. 9. The Clerk appointed for any Commiſſion of Sewers, ſhall yearly Eſtreat all the Iſſues, Fines, Penalties, Forfeitures, and Amerciaments, that ſhall be anſwerable to the King, &c. And the ſame Eſtreats ſhall yearly deliver into the Exchequer, &c. and from thence proceſs ſhall go out to the Sheriff for the levying thereof.

Alſo the Kings Juſtices, the Steward of the Kings houſe, the Clerk of the Market, and the Awnager, ſhall yearly deliver into the Exchequer their Eſtreats of Fines, and amerciaments, &c. Vide Raſtal. Eſtreats. div. 2. Co. 8. 61. Plus hic cap. 90. & 14.

CAP. 14.

Forfeitures.

Stat. 33. H. 8. 20. Vide Co. L. 13.

THe Sheriff, &c. ex officio may ſeiſe to the Kings uſe the profits of lands of perſons attainted for treaſon or felony, &c. and alſo their goods, and is to account for the ſame in the Exchequer. Vide 22. aſſ. 96. Fitz. Coro. 308. 332. & 356. *Forfeiture.*

Co. 7. 34. b. Plo. 237. b.

Now every offendor being lawfully attainted or convicted of high treaſon (by verdict, confeſſion or utlary) ſhall forfeit to the King for ever all ſuch lands, tenements and hereditaments, and annuities which he ſhall have in his own right, in uſe, or poſſeſſion, of any eſtate of inheritance, at the time of ſuch treaſon committed, or at any time after of whomſoever the lands are holden, 25. E. 3. c. 2. becauſe it is a Royal eſcheat. 5. E. 6. c. 11. P. Forf. 2. Co. 3. 10. vide Stamf. 187. 189. & Stat. 33. H. 8. c. 20. Stamf. 53. And his wife ſhall forfeit her dower. Co. L. 37. *Pur treaſon.*

And yet in divers caſes of high treaſon there ſhall be no corruption of blood, nor any forfeiture of dower. See 5. Eliz. c. 1. 11. & 14. & 18. Eliz. cap. 1.

Alſo offendors convicted of high treaſon ſhall forfeit all their goods and chattels (to the King) as well real as perſonal, moveable and unmoveable, their corne growing, and all their debts due to them: ſcz. all ſuch goods, &c. as they ſhall have at the time of their attainder;

but not thoſe which the offendor had ſold or given away before.

He which hath an eſtate in lands, &c. but for the time of life or years, ſhall forfeit only his eſtate or terme.

Miſpriſion. For miſpriſion of treaſon the offendor ſhall forfeit to the King the profits of his lands, &c. during his life, and all his goods and chattels for ever. Stam. 38.

Præmunire. In caſe of Præmunire, the offendor ſhall forfeit all his fee-ſimple lands, &c. for ever; and the profits of his entayled lands, &c. during his life; and all his goods and chattels for ever. See my Country Juſtice.

Felony. For felony the King is not to have the eſcheat except the lands be holden of him, but the words of the Statute de Prerog. Regis cap. 16. are; The King ſhall have the profits, (by the ſpace of one year and a day) of the freehold lands, &c. of felons which they held of other Lords, and which be condemned, or which be fugitives; yea the King ſhall have the mean profits from the time of the felony committed, until an office found, &c. and the year and day next after. Vide Stamf. 49. a. Fitz. Coron. 290. & 49. E. 3. fol. 11. 17. E. 2. c. 16. P. Prærog. 17. 9. H. 3. 32.

And yet Mr. Fitz. ſaith that the King is to have all the profits of their lands, for the year and day next after the attainder of the felon. Fitz. 144. k. And that if a ſtranger ſhall enter upon the lands, within the year and a day, that ſtranger who took ſuch profits ſhall be therefore anſwerable to the King. Fitz. 144. k. vide hic cap. 7.

M. quant al waſt, & auxi al An. & Jo. le fig. de q. les ter. ſont tenus pt. eſlier per viver al Roy, &c. *& faire fine per tot manner de waſt, & forfet. al Roy, & le fine eſt le greind. per cel cauſe.* Vide Stamf. 48. 49.

If the husband be attainted of felony, the King ſhall have the year, day, and waſt, of his wives lands. Fitz. Coron. 327.

A felon obtains his pardon, yet the King ſhall have Annum, diem, & vaſtum. Fitz. Coron. 308.

The King ſhall have Annum, diem, & vaſtum, of lands in Anuc. Demeſne Fitz. Cor. 310. *Vide plus ou Roy an. An. & waſt.* Stamf. 49. 50.

If the felon held his fee-ſimple lands of the King immediatly, and be attainted, the King ſhall have his lands for ever.

For pety treaſon, or felony, if the offendor hath but an eſtate taile in his lands (or but for life, dower, or courteſie) the King ſhall have the profits of the lands during ſuch offendors life; of whomſoever the lands be holden.

In caſe of felony (be it in pety reaſon, or other felony) the lands purchaſed, or deſcended after the attainder ſhall be forfeited. 48. E. 3. 2. b. Finch. folio 71.

But

But in Cases of Hereſie, Conjuration, Witchcraft, Sodomy, &c. there ſhall be no forfeiture of lands, &c. for that the offences be ſpiritual 1 Ja. c. 12. Finch. 71.

Where the perſon attainted is ſeiſed in right of his wife, the King ſhall have the Iſſues, during the life of the husband. Fitz. Coron. 327.

And in theſe caſes the King ſhall have the forfeiture of the lands, from the time of the offence. Finch. 206. 30. H. 6. 5. Da. v. 47.

Leaſes for life ſhall be forfeit to the King, upon an attainder for treaſon, or felony.

Co. 3. 10. Stamf. 188. a. Sometimes he that is attainted of high treaſon, pety treaſon, or felony, ſhall alſo forfeit ſuch lands whereof he neither hath poſſeſſion, reverſion, or remainder, but only a title or right, or cauſe of action: As if a man be diſſeiſed of lands, and the diſſeiſee committeth high treaſon, after an office found thereof, the King may ſeiſe thoſe lands as forfeited and eſcheated to him: And if the diſſeiſee be attainted of pety treaſon for felony, the King ſhall have the profits thereof by the ſpace of a year and a day, and then the Lord of the Fee may enter, &c.

By the attainder of the husband for pety treaſon the wife ſhall be barred of her dower; but otherwiſe it is, where the husband is attainted of murder or other felony. Co. L. 73.

Stamf. 188. Alſo things in action, ſc. debts due by obligation, Statute, or Recogniſance, and ſuch like, are forfeited to the King by attainder or outlawry. Co. 3. 2, 3.

Ibid. Alſo debts due upon a ſimple contract, or without ſpecialty, ſhall be forfeited to the King. Co. 4. 95.

For the goods and chattels of felons, it ſeemeth by Mr. Glandvile, that in this time, for theft only, the Sheriff ſhould have had the felons goods which were forfeited, and that to his own uſe, and not to the Kings. Howbeit the Statute de Prærog. Regis cap. 16. gives now all felons goods to the King, without any exception (Stamf. de Prærog. folio 45) the words of which Statute be thus. Rex Habebit Omnia Catalla Felonum, Dampnatorum, & Fugitivorum, &c. And under this word Catalla be comprehended Leaſes for term of years, the iſſues and profits of lands and tenements, corn growing, debts due by obligation, or upon an account, goods wrongfully taken from the felon, and ſtollen goods, &c. Vide Stamf. ibid. & 188. b.

Felons condemned or attainted ſhall forfeit their goods although they obtain their pardon; as where one kills another ſe defendendo, or by miſadventure; Fitz. Coron. 116. 302.

Sometimes the King ſhall have the goods of felons although they be not attainted of the felony; As if a man be arreſted for felony, and makes reſiſtance, or flyeth, and ſo is killed, here he ſhall forfeit his goods. Fitz. Coro. 290. & 312. tamen vide Stat. 34. E. 3. cap. 12. & quere.

Alſo

Alſo felo de ſe ſhall forfeit his goods, and yet never attainted.

He that killeth himſelf in his own defence, or by miſadventure, ſhall forfeit his goods, but not his lands.

He that being purſued for felony, and flyeth for it, forfeiteth his goods for flying, though he retorne and be tryed, and found not guilty.

But note that always when any forfeiture is of any felons goods, it ought to appear of record. Co. 5. 110.

An obligation is made to two, or two be poſſeſs of a horſe, Ox, or other entier chattel perſonal, and the one of them is attainted, the King ſhall have the whole debt due upon the obligation, as alſo the horſe, &c. for in ſuch entier duties or chattels the King is to have no partner. Plo. 323. b. 343. a.

If the wife killeth her husband, ſhe thereby forfeiteth the goods of her husband. Fitz. Coron. 423.

And in theſe, and all other forfeitures, the Town is chargeable with the goods, and therefore they may ſeile them, whereſoever they be 22. aſſ. pl. 8. Finch. 207.

And yet if a diſtreſs be lawfully taken for rent reſerved upon a Leaſe, or that goods be pawned, &c. if afterwards the owner of ſuch diſtreſſes or goods be attainted of felony, the King ſhall not have the diſtreſs, nor the goods pawned, without paying or ſatisfying the party that diſtrained, or him to whom the goods were pawned. 13. R. 2. Br. Pledg. 31.

Outlawed. If a man be outlawed for treaſon or felony, he ſhall forfeit all his lands, &c. and all his goods. Fitz. Forfeiture 3. Br. 6. yea though he yields his body upon the exigent, yet he ſhall forfeit his goods.

Clerk convict. A Clerk convict (ſcz. who hath his Clergy given him before that judgement is given upon him for the felony) ſhall forfeit none of his goods. Fitz. Coron. 91. Br. Forfeiture 5. & 103. neither ſhall the King have the year and day, and waſt of their lands, for that the offendor is not attainted: Fitz. Coron. 332. 393. Abr. d'aſſ. 79. but by others they ſhall forfeit their goods. Br. forf. 11. 65. & 113. Stamf. de Prerog. 46. Baron. 45.

A Clerk attaint (ſc. who hath his Clergy given him after judgement) ſhall forfeit all his lands, goods and chattels. Br. forf. 65. & 103.

Tenants del Eveſques. Alſo the King ſhall have the eſcheats of lands of the freeholders of Archbiſhops and Biſhops, when ſuch tenants be attainted for felony in the time of vacation, whileſt their temporalties are in the Kings hands, to give at his pleaſure: 17. E. 2. c. 14.

This reacheth to no other eſcheats, but ſuch as grow upon offences, and if the offence were done whileſt the lands were in the Kings hands, although

although the party were not attainted thereof untill ſuch time as the lands be out of the Kings hands, yet the King ſhall have the eſcheat by force of this Statute. Stamf. 41.

If any murderer or other felon ſhall eſcape, the Town or Country ſhall be amerced or fined therefore, by the Statutes, 3. E. 1. c. 9. & 3. H. 7. c. 1. ſc. The Town where the murder or felony was done; and if the Town be not ſufficient, then the amerciament ſhall be laid and levied upon the Hundred, and if the Hundred be not ſufficient, then it ſhall be levied upon the County. *Eſcape de felon.*

But the Sheriff (nor any other) are not to take or levy any thing (ſc. any fine, of any Town, nor of any Gaoler or other perſon) for the eſcape of any felon, before it be adjudged, or aſſeſſed by the Juſtices in Eyre, Stat. Weſtm. 1. c. 3.

And now that there be no Juſtices in Eyre, it ſhall be aſſeſſed by the Juſtices of the Kings Bench, or by the Juſtices of Gaol delivery, or of Oyer and Terminer, or elſe by the Juſtices of Peace (ſc. in Cales where the Juſtices of Peace have power to enquire thereof) Regiſt. folio 184. 21. aſſ. 12. 27. aſſ. 1. 2. 27. 1. R. 3. c. 3. & 19. H. 7. folio 10.

Nota quant eſcape eſt fait, ſi ſoit ſur Record, les Judg. ſa. plus violent mitter le fine, m. ſi ſoit frq. per matter en fait, dong; le Jury doient trover & preſent ceo dent les Juſtices, & puis les Juſtices aſſeſſor ceo. Et a cel propoſe touts Priſoners ſont vel per matter de Record, vel per matter en fait: per matter de Record, quant un preſent in Court eſt commit al priſon per le Court, la ſi le Gaoler ou Gard. nad luy ſemper priſt, il eſt eſcape ſa. auter enquiry (ſino. ad reaſonable excuſe) & les Judges voile mitter le fine maintent. ut ſuper.

Per matter en fait home eſt priſoner, qt. il eſt arreſt per le vic. bayliff, Conſtable ou auter, & eſcape, la il ne reſpond. al eſcape, dent que le eſcape ſoit preſent dent les Juſtices, &c. *ut ſuper.*

Et in amb. c. caſes, ſoit l'eſcape ſur Record, ou per matter en fait, les fines aſſeſs per les Juſtices, ſerra eſtreat per c. in Leſchequer, & dilonq; proces iſſer al vic. de levyer ceo.

Si le vic. per eſcape de felon priſt ou levy aſc. choſe, dent que l'eſcape ſoit adg. & aſſeſſe ut ſuper, il payer al party tant que il an. priſe, & auxi al Roy tant, per l'action dl party, ou per Inditement, &c. Weſtm. 1. c. 3.

Before this Statute, if there had been any ſuch eſcape, the Sheriff himſelf would aſſeſs the fines, which many times were unreaſonable, and therefore this Statute of Weſtm. 1. was made, ordaining that ſuch fines ſhould be adjudged by the Juſtices as aforeſaid.

A man arreſted for a treſpaſs, eſcapeth, or is reſcued by a ſtranger, theſe are finable, &c. Stamf. 31. e.

Stamf. 150. e. If a man ſtands mute in an appeal, or upon an inditement of felony, he ſhall forfeit his goods. Br. forf. 11. Plo. 262. But he ſhall forfeit no lands, except his offence be treaſon. Bacon v. 45. *Mutus.*

So

So if a man that is arraigned for felony ſhall challenge above 35. without cauſe. Plo. 262. Stamf. de Prerog. fol. 46. ſaith, if he challenge above the number of two enqueſts.

So if a man be found guilty of felony, and then hath his Clergy: and in theſe three former caſes the offendor ſhall forfeit his goods, but no lands except the offence be treaſon; for that they refuſe the trial or judgement of the Law: See Plo. 262. b. & Co. L. 391.

Sacerdos. Si Sacerdos vel Rector fecerit feloniam, *il forfeitera touts ſes biens, & diſmes receives*, niſi fuerint in Sanctuario. Fitz. Coron. 245. & 413. 8. Ed. 2. & 22. Ed. 3. Stamf. 188. g.

Si Parſon ſoit utlage, ou autem. ad forfeit ſes biens, l'officer poet ſeiſer ſes bie. & a cel prepoſe l'officer pt. enter ſ. les poſſeſſions Eccleſiaſtical de tiel Parſon, ou in le eſgliſe en Sanctuary. 27. aſſ. Pl. 66.

Priſt Sanct. If a man flies to the Church for felony, his goods are forfeited preſently, and the profits of his lands: and if he abjures before the Coronour for felony, he ſhall forfeit his lands and goods: Br. forf. 116. 121. Stamf. 120. a. 123. a. otherwiſe, where a man abjures for a treſpaſs or other offence, not being felony. Stamf. 123. a.

Abjure.

Hereſie. If a man abjures for hereſie, he ſhall not forfeit his goods: but if he be convict and delivered to the lay power, &c. he ſhall forfeit his goods, but he ſhall forfeit no lands, except he be put to execution. Quere of this laſt, for by the Common Law there was no ſuch forfeiture of lands; and the Statute of 2. H. 5. c. 7. which gave the forfeiture of lands in caſe of hereſie, is now repealed by the Statute of 1. Ed. 6. c. 12. & 1. Eliz. c. 1. vide Finch fol. 71. Doctor & St. fol. 115.

Recog. Fines. Amercements. Alſo the King ſhall have all amerciaments, fines, iſſues, and all forfeitures of recogniſances loſt or forfeited, &c. before any of his Judges, or Juſtices in any of their Courts or Seſſions; but theſe muſt be firſt eſtreated into the Exchequer, and from thence proceſſe muſt be awarded to the Sheriff to levy the ſame to the Kings uſe, &c.

Alſo the Courts of Exchequer, of Wards and of the Duchy have authority to ſet amerciaments, fines, and penalties upon parties, officers, and other perſons, for their defaults, contempts, negligences, or miſdemeanors; as alſo to take recogniſances for the King, &c. All which amerciaments, fines, penalties, and forfeitures of ſuch recogniſances ſhall be to the King, &c. 33. H. 8. c. 39.

Alſo the King ſhall have all amerciaments, fines, forfeitures and iſſues forfeited in any of the Sheriffs Courts, ſcz. in their Tourns, County Courts, or Hundreds within the twelve Shires of Wales, and the Sheriffs of Wales ſhall account for the ſame. 34. H. 8. p. Wales 43.

But otherwiſe it is of other Sheriffs within England: See 6. H. 7. fol. 2. 3. & hic tit. Sheriffs Fees.

Goods attached. Goods attached by the Sheriff, &c. if the party ſo attached (by his goods) appear not at his day, &c. the goods attached are forfeit to the King, and the Sheriff ſhall be anſwerable for the value thereof: See hic tit. Attachment. Br. forf. 3. 4.

Iſſues

Iſſues returned upon Jurors (they making default of appearance, &c.) ſhall be loſt and forfeited to the King, and Levied by the Sheriff to the Kings uſe, upon eſtreats thereof made out of the Exchequer, &c.

And ſo of Iſſues returned upon the Defendant.

The pety Jury attainted in a Writ of attaint, ſhall forfeit to the King all their goods, and the profits of their Lands during their lives, or until they have made a Fine with the King: Br. attaint. 99. Fitz. Aſſ. 396. Nat. brev. 113. where alſo you may ſee the whole Judgement given againſt ſuch offenders. *Attaint.*

If any perſon ſhall ſtrike, or but draw any weapon to ſtrike any Juſtice ſitting in place of Judgement; Or to ſtrike any Juror or other perſon in the preſence of the ſaid Juſtices, or ſhall make an Affray in their preſence, ſuch offenders ſhall forfeit to the King all his goods, and the profits of his Lands, during his life: So it is of any perſon which ſhall reſcue any ſuch offender. Vide Fitz. Judgement, 174. & Stamf. *Affray.*

If any perſon ſhall ſtrike another in Weſtminſter-Hall, ſitting in any of the Kings Courts, there, he ſhall forfeit to the King his goods for ever, and the profits of his Lands, during his life, Fitz. Cor. 280. Dyer 188.

If any perſon ſhall ride or go armed offenſively in affray of the Kings people, the Sheriff may ſeize and take away their armour and weapons, and praiſe them, and ſhall anſwer them to the King as goods forfeited to him; See my Countrey Juſtice, tit. Armour. *Armours*

If any perſon ſhall wear any privy armour in the Kings Palace, or in Weſtminſter-Hall, he ſhall forfeit his armour to the King: Fitz. Forf. 22.

Note that Goods and Chattels ſhall be forfeited in divers Caſes, as,

1. In Treaſon,
2. In Felony,
3. In Præmunire.

} the party being Attainted by } Judgement of Death given upon him, or Out-Lawry.

4. In killing himſelf.
5. For flying for Felony, although not guilty of the Fact.
6. For ſtanding Mute, or refuſing to be tried by the Country.
7. By Conviction of Felony, ſc. by Verdict without Judgement.
8. For Pety Larceny.

In Caſes of Out-lawry.

9. For going beyond the Sea without Licenſe.
10. For challenging above two Enqueſts, upon Arraignment for Felony.
11. For Abjuration for Felony.
12. For Hereſie, if he be Convict and delivered to the Lay-power.
13. Goods Attached, if the party Attached appeareth not at his day, &c.
14. The Petty Jury Attainted in a Writ of Attaint.
15. Striking, &c. of a Judge, or Juror, in the preſence of the Judge.

16. Armour worn offenſively.

Regules. *Nota que home ne forfeitera aſcuns terres que il ad in auter droit, come in droit ſa feme, ou in droit ſa eſgliſe, mes ſolement les terres que il ad in ſon droit demeſne.* Stamf. 187. b.

Home endite de felonie, ad feme inheretrix, le Roy aver a les iſſues del terre le feme, &c. Iſſint ſi le baron eſt fugitive Roy, aver a l'iſſues, tanque le baron ſoit mort ou attaint. Vide Fitz. Cor. 332. 356. Fitz. forf. 16. & Coron. 350

Home occiſt auter, & obtaine Pardon, & uncore ſes biens furount ſeiſies come forfeit al roy, & auxy lan & waſt in ſes terres, & le vic' fuit charge de tout. Fit. Coro. 308

Home ad Iewel in gage pour x. li. & ceſte que mitter ceo in gage eſt attaint, le Roy navera le Iewel ſans payer le x. li. car prerogative le Roy ne voet prejudicer auter, Plow. 487.

Et iſſint eſt de diſtreſſe priſe, &c. Plow. 487. b.

Auxi le vie. eſt chargeable on. les biez. dl. felon. hic cap. 6. & Stamf. ibid.

Seize felons goods. Note that after a man is Indited of Felony (by the Statute made Anno 25 E. 3. cap. 14.) a Capias ſhall go out to the Sheriff, commanding him to attach the body of the Felon: And if the Sheriff return in the ſaid Writ, that the body is not found, another Writ of Capias ſhall be incontinently made returnable at three weeks after, and in the ſame Writ it ſhall be compriſed that the Sheriff ſhall ſeize his goods, and ſafely to keep them till the day of the Writ returned: and if the Sheriff return that the body is not found, and the Inditée cometh not in, the Exigent ſhall be awarded, and the goods ſhall be forfeit: But if he come and yeild himſelf, or be taken by the Sheriff (or other Miniſter) before the return of the ſecond Capias, then the goods and Chattels of the Inditée ſhall be ſaved. 25 E. 3.

By the Statute made Anno 1 R. 3. no Sheriff (or other Officer) ought to take or ſeize the goods of any perſon, arreſted, impriſoned, or indited for Felony, or for ſuſpicion thereof, before the ſame perſon be duly convicted or attainted of the ſame Felony (ſc. either by Trial, Confeſſion, or Outlary and Judgement thereupon given;) or that the ſame goods be otherwiſe lawfully forfeited, upon pain to forfeit the double value of thoſe goods ſo taken to the party grieved. 1 R. 3. c. 3. P. Sher. 24. Br. forf. 40.

Howbeit this Statute extendeth not to any other, but to ſuch as be in priſon: Alſo this Statute extendeth not to Lands, but only to goods. Stamf. de prerog. fol. 48.

Mr. Bracton, lib. 3. tit de Coron. ſaith thus, Priſones impriſonati antequam convicti fuerint, de terris ſuis diſſeiſiri non debent, nec de rebus ſuis quibuſcunq; ſpoliari, ſed dum fuerint in priſona debent de proprio in omnibus ſuſtentari, donec per Judicium deliberati fuerint, vel Condemnati.

And in another place of the ſame Book, cap. 18. he ſaith thus, Qui pro Crimine vel Felonia magna (ſicut pro morte hominis) captus fuerit & impriſonatus, vel ſub cuſtodia detentus, non debet ſpoliari de bonis

bonis ſuis, nec de terris ſuis diſſeiſiri, ſed debet inde ſuſtentari donec de Crimine ſibi impoſito ſe defenderit, vel Convictus fuerit, quia ante convictionem nihil forisfacit, &c.

And yet leſt the goods ſhould be diſorderly waſted, imbezelled, or ſold away, the Sheriff, &c. (before the attainder of the Felon, ſo ſoon as he is taken) may take Sureties that the goods be not imbezelled, &c. (ſc. may cauſe the owner, or ſome of his Friends to finde Surety) and for want of Sureties, the Sheriff, or other his Officers may ſeize them, and cauſe them to be praiſed and valued, and then may deliver them to the Town (ſc. to ſome of the neighbours of the Town where the goods were) by them ſafely to be kept, until the offender be convicted or acquitted. And by the opinion of Mr. Brook, tit. forf. 44. this order ought to be obſerved concerning the goods of every one which committeth Felony, until he be attainted: But yet the Felon muſt have reaſonable maintenance out of his goods for himſelf and his family, in the mean time: And according hereunto there is a Writ in the Regiſter to be directed to the Sheriff, videlicet, Quod tenementa & bona taliter capta, videantur & imbrevietur, & ſalvo cuſtodiantur per ballivum ipſius capti, qui ſecuritatem Regi inveniet ei reſpondendi ſi, &c. Salvis inde ipſi capto & familiæ ſuæ, neceſſariis quamdiu fuerit in priſona. So that the Felon muſt have maintenance of his goods for him and his family, until he be convict, and then that which doth remain ſhall be to the King. Bracton, lib. 3. cap. 18. & Stamf. de prærog. fol. 48. a. De illis autem qui in fuga ſunt, aliter erit. Bracton, ibidem.

43 E. 3 21. Br forf. 7. 10. 44. Stamf de Prerog. 47. Ba. v. 48.

Plo. 68.

So then this difference is to be obſerved in the ſeiſing of a Felons goods, viz. where the goods be forfeited before the Felony tried (as where one is found guilty before the Coroner of the death of another; or where it is found before the Coroner that one did flie for a felony) in ſuch caſes the goods ſhal be preſently ſeiſed upon the forfeiture of them, though there be no conviction of the Felon; and upon ſuch forfeiture the goods are preſently the Kings, and the Felon is to have no maintenance out of them. &c.

But upon an Indictment, &c. where the goods be not forfeited until the Felony tried, then they ſhall not be ſeized, or removed out of his houſe until the Felon be convicted, but yet there the Sheriff, &c. may take Sureties that the goods be not imbezelled or diſorderly waſted, as aforeſaid, and for want of Sureties may deliver them to the Town, &c. And note that if goods ſo delivered to the Town, be imputed in their cuſtody, the Sheriff ſhall be charged to levy of the ſame Town the value of the loſs, &c. (as it ſeemeth) F. Coron. 355.

And Mr. Stamford giveth it for a general Rule, that the Townſhip where the goods of Felons or Fugitives be found, ſhall alwayes make anſwer to the King of them. Stamf. de prerog. 47.

If one be indited ſuper viſum corporis, of the death of a man, before the Coroner, all his goods are forfeit preſently, although he ſhall be acquitted after (otherwiſe where one is indited before other Juſtices) vide Abr. d' aſſ. 71. And yet by others, there is no forfeiture without the flying be found, Vide Fitz. forf. 32. & Stamf. de prerog. 46.

Where one is found guilty of Homicide before the Coroner, the Coroner may ſeize the goods, and deliver them to the Town, &c. But upon a fugam fecit found before the Coroner, the Sheriff may ſeize the goods, and deliver them to the Town, &c. Now we call that a fugam fecit, where any flie for fear, when any Treaſon, or Felony is committed by any. Finch.

Fugitives. Yea if a man ſhall flie for felony, the Sheriff, &c. is to ſeize all his goods and chattels, real and perſonal, as alſo the profits of his Lands to the Kings Uſe.

And the Sheriff may retain ſuch goods and Chattels, and the Iſſues and profits of ſuch Lands, to the Kings Uſe, until ſuch time as the fugitive ſhall be attainted or acquitted; for that ſuch his flying maketh a great preſumption againſt him. Stamf. de prerog. 45. 46. vide Fitz. Coron. 289. 290. & 366. & Fitz. Forf. 32.

He that flyeth for Pety Larceny, ſhall forfeit his goods. Fitz. Coron. 406. tamen vide Stamf. 47. & Quære.

An Acceſſary before the Felony committed, ſhall forfeit his goods, upon a fugam fecit found, &c. But otherwiſe of an Acceſſary after the Felony committed. 4 H. 7. fol. 18. Br. Coron. 199. & forfeitor. 52.

But yet the goods, &c. of a fugitive, are not forfeit until the flying for Felony be lawfully found of Record; either before the Coroner upon an inditement, ſuper viſum corporis, in caſe of the death of a man; or by verdict upon his acquittal (for although he be found Not guilty upon his Trial, yet he ſhall forfeit his goods for his flying: Quia fatetur facinus, qui judicium fugit, and the Law will admit no proof againſt this preſumption:) And although the Jury which tryes him, ſhall find him Not guilty, and further that he did not flie: yet the goods are forfeit by force of the finding of his flying before the Coroner. Vide Stamf. de prerog. 46. & Fitz. Forfeitor 29. & 35. Co. 5. 109. Plo. 36. 2. Co. L. 373.

And if a Felon be arreſted for any manner of Felony, and as he is leading to a Juſtice of Peace to be examined, or towards the Gaol, he flyeth, and thoſe which purſue him cannot take him again without killing of him, by reaſon whereof they do kill him: if all this matter, and the flying be preſented before the Coroner, or before any other who hath authority to inquire of felonies, the party ſo ſlain ſhall forfeit all his goods and chattels: ſc. all ſuch as he had at the time of the felony committed: Fitz. Coron. 290. Co. 5. 109.

Fugitives,

And in theſe and other like caſes preſently after the flying found by enqueſt before the Coroner, the Sheriff is to ſeize all the goods, and the profits of the lands of ſuch offendors. See Fitz. Forf. 32. & Stamf. 47. b.

Good. And the cuſtody of the goods of thoſe which be convicted of felony, or which be fugitives, after they be forfeited, doth belong to the Town where thoſe goods be, or where the felon doth dwell: and therefore upon a Fugam fecit preſented before the Coroner, the goods ought preſently to be ſeized by the Sheriff or his Officers, and praiſed by an enqueſt, and the Sheriff ſhall cauſe the appraiſement to be inrolled in the Coroners roll, and the goods ſhall be delivered to the Town to anſwer Stamf. de Prerog. 47.

anſwer to the King for them: And though the goods be not delivered to the Town, yet if the goods were in the felons houſe or poſſeſſion at the time of his conviction or flying, the Town ſhall anſwer for them: Fitz. Coron. 366. Stamf. 192.

Note that under this word goods (Catalla) be comprehended Leaſes for years; Lands extended for debt upon judgement given in any Court of Record, or upon any Statute Merchant or Staple, Recog. or Elegit; The wardſhip of body and lands; the iſſues of lands and tenements; Corn growing; debts due by obligation, Statutes, or Recog. or due upon an account, or upon a ſimple contract; yea goods ſtoln, and goods wrongfully taken from the felon.

Fitz. Coron. 390. Stamf. 194. But for the iſſues and profits of felons and fugitives lands, the Sheriff is, and was alwayes chargeable therewith according to the extent thereof, and not any Town: And the Sheriff (preſently after a Fugam fecit found before the Coroners) ſhall ſeiſe them into the Kings hands by word only, without taking any enqueſt. Stamf. de Prærog. 47. *Lands.*

Alſo he that ſhall fly for felony, ſhall not forfeit the goods or profits of his lands, which he had at the time of the felony or flying; but thoſe and ſuch only which he had at the time of the inditement or acquital: Co. 5. 109. Fitz. Coron. 296. & 344.

Co. 5. 110. & 111. If proceſſe be awarded upon an appeal or inditement of felony againſt any perſon who doth abſent himſelf and not appear, until the Exigent ſhall be awarded againſt him, by this abſenting himſelf (which in Law is a flying) he ſhall forfeit all his goods, which he had at the time of the Exigent awarded, although he yeild himſelf upon the Exigent, and that after he be acquit of the felony: but if here in priſon, or beyond the Sea, &c. at the time of the Exigent awarded, then he ſhall not forfeit his goods, &c. See Fitz. forf. 19. & 31.

See poſtea, Utlaw.

Note that he that is outlawed for treaſon or felony, ſhall forfeit thoſe goods which he had at the time of the Exigent awarded, and not ſuch as he had before, and hath aliened.

Note alſo a difference touching the profits of the lands of fugitives: ſcz. where the flying is preſented before the Coroner, and where the flying is found by verdict upon an acquital; for upon a flying preſented before the Coroner, the offendor ſhall forfeit the profits of his lands until his death, or until he be acquit, or until he hath purchaſed the Kings pardon: But upon a flying found by verdict upon acquital, he ſhall forfeit no profits or iſſues of his lands, for by his acquital his lands are diſcharged, and conſequently the profits thereof: Fitz. Co. 344.

Where one which paſſeth out of the Realm without the Kings licence, or contrary to the Kings Proclamation, or having licence, ſhall not return upon the Kings command, &c. he ſhall forfeit his lands and goods, vide Fitz. 85. a. c. & Dyer 128.

If a man ſhall kill himſelf, he ſhall forfeit to the King all his goods and chattels, real and perſonal, and his debts, &c. And the Sheriff and his Officers are to ſeiſe them to the Kings uſe, but he ſhall not forfeit *Felo d. ſe.*

forfeit his lands. Plo. 258. And this forfeiture ſhall have Relation to the time of the Act done in his life time, which was the cauſe of his death. Finch. 75.

If an infant, a man non compos mentis, or a lunatike killeth himſelf, they ſhall forfeit nothing: See more in my Countrey Juſtice, tit. felo de ſe.

CAP. 15.

There be other kinds of forfeitures of goods to the King, as *bona waiviata*, Eſtrayes, *bona Confiſcata*, *Deodanda*, &c.

Bona waiviata.

BOna waiviata, or derelicta, are where a felon hath ſtoln goods, and upon hue and cry, or other purſuit after him, he waiveth the goods; or where felon for fear to be apprehended (thinking that purſuit is made after him, or otherwiſe to eaſe himſelf of his carriage) he having the goods with him in his poſſeſſion, flyeth and waiveth, caſteth away, or goeth from the goods: In theſe caſes the goods are forfeit to the King by the Common-Law of this Realm: and the Sheriff, &c. is to ſeiſe them to the Kings uſe: yea any other officer, or perſon in the right of the King, and to the uſe of the King, may ſeiſe the goods ſo waived. Co. 5. 109.

And yet the party robbed, or owner of the goods, ſhall after be reſtored to his goods again: ſc. if he maketh freſh ſuit, and ſhall do all his endeavor to take the thief, whether he be taken or no; and this is by the Common-Law: or without freſh ſuit, &c. if he do cauſe the felon to be thereof attainted, or that the party robbed ſhall but procure another to give evidence upon the inditement. Vide Finch. 75. &c. and this is by force of the Statute made, 21 H. 8, c. 11. Br. Eſtrays 8. & 14.

But if the felon had not the goods with or about him when he fled (having peradventure hid them, or left them in his own houſe, or in the houſe of any other, or in the cuſtody of any other, or left them within any mans Mannor, or put, hid, or beſtowed them in the ground, or in any other ſecret place, and then has fled:) Theſe goods are not forfeit, neither ſhal they be ſaid to be waived goods in Law, but that the owner may take them again when he will, without either freſh ſuit made after the felon; or without cauſing him to be attainted, or other proſecuting of him (as it ſeemeth) and the Sheriff, nor any other Officer are not to ſeiſe or meddle with any ſuch goods, &c. Co. Ibid.

Note that there can be no waiſe (properly) but of goods that were ſtoln: and yet if upon hue and cry levied, a man that hath committed no felony, doth leave his own goods and flyeth, thoſe goods (by ſome opinions) may be ſeiſed to the Kings uſe for a waiſe. See 29 E. 3. fol. 29. And ſo ſeems the opinion of Laicon in 12 E. 4. fol. 5. But by the opinion of Nedh. in 12 Ed. 4. and of Maſter Brooke tit. Eſtray 2. Stamf. 186.

(agreeing

(agreeing with the opinion of Sir Edward Coke, here before) a waife is only that which is ſtoln, and after waived and left in flying; and Catalla felonum, are the proper goods of the felon, and the one may be ſeized and forfeited by the flying, but not the other: Br. Eſtray 2. 6. but a man waiving his own goods, they are not forfeit, but that he may have and take them again when he will.

Home poet preſcribe d'aver wayffe, mes nemy in Catalla felonum. Br. *Regule.* Eſtray 2. 6. & Co. 9. 27.

Biens emblees & waiffed, uncore ceſty a que le propertie fuit, poet eux reſeiſer 20. ans apres, ſi nul officer le Roy, ou d'auter Seignior, &c. ad eux ſeiſie, Fitz. Eſtray 2.

Iſſint q. bie. wayved ſont al Roy, ſil, ou ſes Officers, ou aſcu. auter a ſon uſe eux ſiſie dunt le owner, autrem, ney. 21 E. 4. 16.

Vuc per Gerrard & Catlin, ib. ſont forfeit al Roy per le wayver tantum ſa. ſeiſer. Vide Dyer 338.

13 E. 4. 10. *Si Merchant Alien vient in ceſt realme per ſafe conduct, & ſes biens ſont emblees, ceux biens ne poeint eſtre waifes, car le roy ad grant a luy* ſalvum & ſecurum, &c. tam in bonis quam in corpore, *& ceſt un covenaunt perenter le roy & luy, per que le roy ne poet aver les biens come waifes; & per meſme le reaſon le roy ne poet grunter eux al auter perſon,* &c. Fitz. Eſtray 1.

Bracton lib. 1. c. 12. Theſe goods waived, the Civilians call derelicta: and Maſter Bracton ſayth, Quod olim fuerunt inventoris de jure naturali, & jam efficiuntur principis de jure gentium; and he reckoneth them inter res quæ ſunt nullius, &c. as eſtraies, and the like.

But now Kings have granted this, and ſuch like Prerogatives unto their Subjects within their liberties, ſo that Waifes and Eſtraies are (in many places) the Lords of the Franchiſe where they are found; but they muſt by him be cauſed to be cryed in Churches, and Markets near about him, or elſe the year and day doth not run to the prejudice of him that hath loſt them.

Nota per le Common Ley Eſtray ſerra proclaime in deux prochain market Villes, & deux market jours, ſon in lun ville, & lauter in lauter ville: Et ſil ſoit claime deins lan & jour, le owner reavera; & ceſty que priſt eux eſtray poet eux retainer tanque il ſoit ſatisfie pur le finding, keeping, & proclaiming del beaſt, &c. Vide Br. Eſtray 1. 4. & 16. Fitz. Eſtray 4. & Co. 5. 108. Finch. 245. & Stat. 27 H. 8. c. 7. Eſtray.

Et vuc. ſemble que Eſtrayes fuer aunciently proclaime, ey bien en eſgliſes come en markets, &c. *un foits en le eſgliſe, & deux foits in markets.* Vide Britton fol. 26 & 39 E. 3. fol. 3.

Eſtray ne poet eſtre in tiel lieu, ou le partie ad common. Br. Eſtray 3. & Co. 7. 16.

Co. 5. 108. *Biens de Infant, feme covert, executrix, home in priſon, & home ouſter le meere, fils eſtreyont, & ſons proclaime ſolonque le loy, ſi nul claime eux deins*

le an

le an & jour, ils touts ſerra lye, & tiel biens poient eſtre ſeiſe al oeps le roy, &c.

Eſtray eſt lou aſcun beaſt ou cattell vient in aſcun ſeignioriе, & nul conuſt le owner de ceo.

Et nota que waived biens & eſtraies ſerra ſeiſe per lofficer le roy, al oeps le roy; ou per lofficer un bailiffe del ſeignior, que ad tiels choſes per grant le roy, ou per preſcription al oeps le ſeignior: Termes del Ley.

One as Bayliff or ſervant to the Sheriff, ſeized a horſe as an eſtray to the Kings uſe, and proclaimed him according to law, &c. and after the yéer and day ſold him, and the Sheriff accounted therefore in the Exchequer. Br. Eſtray 4. & 5. 24 H. 6. fol. 5.

Swans may be ſeized as an eſtray. 7 H. 6. Fitz. Barr. 6.

Swans that be unmarked and wild (being at large and abroad) the Sheriff may ſeize them to and for the uſe of the King, by his prerogative, they being volatilia regalia, Co. 7. 16.

Bona confiſcata. The word confiſcate (confiſcare, i. conferre in fiſcum) cometh from fiſcus, which (as Maſter Minſheu ſayeth) originally ſignifieth a hamper, &c. but Metonymically, the Emperors treaſure, becauſe it was anticently kept in hampers; and ſuch goods as were forfeited to the Emperors treaſure for any offence, were bona confiſcata, and ſo do we call thoſe goods that are forfeited to our Kings Exchequer. Hæc ille.

And indéed our law in ſome caſes doth intitle the King to goods that late were another perſons, but loſt by ſome default or negligence of his; yet this cannot properly be termed a forfeiture, but a confiſcation of goods. As if a man do ſteal divers goods, and the owner of the goods doth bring his appeal of Robbery againſt the felon, and therein doth omit or leave out any part of his ſaid goods that were ſtoln; in this caſe the King ſhall have all thoſe goods which were left out of the appeal; and the reaſon of law is, for that by this omiſſion or leaving out any of the goods the felon may eſcape, and the appellant ſhall be thus puniſhed by the loſs of his goods, for ſuch his negligence, connivency, and concealing of the felons offence; and then in as much as the owner cannot have thoſe goods, the King ſhall have them as confiſcate, according to the old rule, quod non capit Chriſtus, capit fiſcus. *termes de ley.* Co. 5. 110. Fit. cor. 100.

So if a man be indicted for the felonious ſtealing of another mans goods, where in truth thoſe goods be his own, and the goods be brought into the Court (as a mannor againſt him) and he is asked by the Court whoſe thoſe goods be, and he doth diſclaim to have any property in them; by this diſclaimer he ſhall loſe the goods, though they were his own; and though he be acquit of the felony, yet the goods by this diſclaimer ſhall be confiſcate to the King. Fitz. Coron. 355. & 368. *termes de ley.* Stamf. 194. and the Sheriff ſhall be charged with the ſame. Ibid.

So if goods be found in the poſſeſſion of a felon which he doth diſavow or diſclaim to have any property therein, and after he is attainted

tainted for ſtealing of other goods, but not of thoſe; in this caſe the goods which he did diſavow, ſhall be confiſcate to the King: but if he had been attainted for the ſtealing of thoſe goods, they ſhould have been termed goods forfeit, and not confiſcate. Fitz. Forf. 24. Finch. fol. 75.

And ſome do hold that all goods which are forfeited to the Kings Exchequer, be bona confiſcata. Minſh.

Co. 5. 110. And if A. hath the goods of B. by bailement, or finding them, or by other lawfull means, and B. doth bring an appeal of robbery againſt A. charging him to have ſtoln them, or taken them feloniouſly, and it is found by the Jury, that the goods were the plaintiffs, and yet that the defendant A. came to them lawfully, in this caſe B. the plaintiff ſhall loſe theſe goods to the King, for his falſe and malitious appeal; ſc. they ſhall be confiſcate. *Faux appeal.*

If a man do ſteal goods at divers times from ſeveral men, and he is attainted at the ſuit of one of them for the goods ſtoln from him, but is not attainted at the ſuit of the others, by this attainder the felon ſhall forfeit to the King not only his own goods, but alſo the goods ſtoln from thoſe other at whoſe ſuit he was not attainted, although he had no property, but only a poſſeſſion of thoſe goods; for a felon hath no property in goods ſtoln, but the property doth alwayes remain in the right owner, which property in this caſe he alſo forfeiteth or loſeth to the King, for default of purſuing the felon. *Pur default de purſuit.*

So if a man do ſteal goods from another, and before his attainder he doth kill himſelf, he ſhall forfeit to the King not only his own goods, but alſo the goods which he hath ſtoln from the other: for the owner of thoſe goods not having proſecuted and given evidence againſt the offendor to attaint him of felony (either by appeal, or indictment) can neither have reſtitution of thoſe goods by the Common Law, nor by force of the Statute of 21. H. 8. c. 11.

Co. 5. 110. Fitz Co. 298. Stamf. 21. Deodands, are goods, or any other thing, which do cauſe or are any occaſion of the death of a man by miſadventure: And the Jury which do find the death of the man, muſt alſo find and appraiſe the Deodand, and the Cozoner ſhall retorne the ſame in his inquiſition, and in whoſe cuſtody the ſame goods or Deodand remains: and the Sheriff ſhall be chargeable therewith; ſc. ſhall be charged to levy the price of ſuch Deodands of the Town, though the thing were not delivered to them to keep; or the Sheriff may ſeiſe ſuch Deodand; vide Kiel. 68. that the Kings officer may ſeiſe them preſently. *Deodands.*

See the Statute de officio Coronatoris made Anno 3. E. 1. that horſes, boats, oxen, and carts, or other things whereby any perſon ſhall be ſlain, that properly are called Deodands, they ſhall be praiſed, valued, and delivered (by the Sheriff or Cozoner) to the whole Townſhip, who ſhall be anſwerable therefore.

Every Sheriff, within one moneth after the arrival may ſeiſe to the Kings uſe, all the goods and chattels of any outlandiſh perſons calling themſelves Egyptians, that ſhall come into this Realm: And may *Goods of Egyptians.*

keep the one moity thereof to his own use, making an account to the King in the Exchequer for the other moity, 22.H.8.c.10.

But yet every person that shall prove by two credible witnesses, before the Sheriff, that any of those goods were craftily, or feloniously taken from him, shall be presently restored thereto, upon pain of the double value thereof, to be forfeited by the Sheriff, to the party grieved, &c.

And yet note that after the moneth, the offence is made felony by the Statutes, 1. & 2. Ph. & Ma. c. 4. & 5. Eliz. c. 10. And then the King is to have the whole goods of such Egyptians.

Utlaws goods.

Where a man is appealed, or indicted for felony or treason, and withdraws and absents himself so long time as that an Exigent is awarded against him (sc. by the space of five Counties) this absenting himself is accounted a flying in Law, for which he shall forfeit all his goods and the profits of his lands which he had the day of the Exigent awarded, or at any time after, although he shall be afterwards acquit of the felony or treason, and although he yields himself upon the Exigent. And the Sheriff or his officers may, ex officio, seise them presently to the Kings use. See hic antea Fugitives, & Franchises. Stamf. de Prerog. fol. 47. Br. Relat. 16. Co. 5. 110. b. Stamf. 184.

Pur felonie.

Note that he which is outlawed for felony, shall forfeit his lands, and the King shall have Annum, diem & vastum, &c. But for utlary in any personal action he shall forfeit no land, but only the profits of his lands. Br. Forf. 75. & utlag. 36. and all his goods, chattels, and personal estate; sc. his corne sowen upon the ground, cattel, implements of houshold, and goods moveable whatsoever.

Le reason que utlary in trespass, ou aut. personal action n'est forfet al terr, come utlary per felony est, per ceo que comt. le Non apparance est le cause dl utlary en ambideux cases, unc. le force dl utlary serra esteeme accords al heinousness dl Offence, que est le principall cause & foundation dl Proces. Finch. 4.

But the party outlawed doth not forfeit his goods, (neither may the Kings Officer, &c. seise them) before the time that the utlary appeareth of Record, sc. either by the Sheriffs Retorne of the Exigent, or that the utlary be removed by a Certiorari; or be certified by the Sheriff, sur Testatum est. Fit. 116. Co. L. 288. b.

Nota que la sont secundum briefe de capias utlag. lu. tantum de apprehend le party tant. de pernd. le party, & Inquir. de bonis & autre le Regist. sec. de accord. vide fol. 138. b. & inter Judicial. fol. 24. a.

In action personal.

The Sheriff (and his officers) may ex officio seise to the Kings use, all the goods and chattels reall and personall, of all such persons as shall be outlawed in any personall action: sc. all such goods as they had at the time of the utlary pronounced: And they may take for the King all the profits of the lands in the possession of the party outlawed, sc. they may mow or sever and take all the corn and grass growing, and may take the feed and herbage of the grounds, &c. (as they arise or grow of themselves) and the rents of his Farmours, as the Plo. 541. b. 5. H. 7. 16. 21. H. 7. 7.

the party outlawed might; But they may not meddle with the poſſeſſion of the lands, to plough, ſow, grant, or let the ſame, &c. And if the party outlawed ſhall make a feoffment of his land, the King ſhall have no more the profits thereof, but the feoffee ſhall have the ſame, for that the King hath not any poſſeſſion of the land, although he hath the profits thereof. See Br.Forf. 24.26. & 30. & Br. Iſſues 9.10.Plo. 541.b.& Stamf.de Prerog.57.b.

And yet if tenant for years be outlawed, the King (or his Officers) may ſeiſe the land and terme, and may plow the ſame land to ſow with corn, and may occupy the ſame in the ſame manner as the termour or tenant might. But otherwiſe it is, when the tenant of a Freehold is outlawed; for in ſuch caſe the King may cut the graſs, &c, for that it is a thing which is annual (ſc. yearly cut or fed) but he may not plow the land, nor cut the underwoods; neither ſhall the King, or his officers meddle to cut or crop any trees growing upon the freehold. vide 9 H.6.fol.21.

But where a woman executrix takes a husband who is outlawed, the goods of the teſtator ſhall not be thereby forfeited. 33. H. 6. Br. Forf.71.

And ſo if an executor himſelf be outlawed, he ſhall not thereby forfeit the goods of the teſtator. Ibidem.

If a woman covert be outlawed in an action of debt or treſpaſs, the King is not to have her Terme (or a Leaſe for years which ſhe hath) for that it is in the husband. 9. H. 6. fol. 52. *Et vnc. joynt Terme al feme ſerra miſe en execution per debt al Roy per le baron: Iſſint le baron forfet Terme que il ad joyntm.on ſa feme, per Atteynd.*

He that is outlawed in a perſonal action, ſhall forfeit to the King all ſuch debts as are owing to him by bond or other ſpecialty; but not ſuch debts or other duties, as are due to him by contract, &c. (without ſpecialty) as it hath been antiently holden. See 49. E.3.Br.Forf. 74.16.E.4.4.& 4.H.7.17. Br.Forf.107.

Le reaſon al ley ſuit, per ceo que le debtor pt. aver Gage ſa ley envers le dettee ſur un ſimple contract, m. ney envers le Roy, & per ceo le Roy ne ſuit d'auntiels debts due per contract ſans ſpecialty, ceque le act al offend. ne doit prejudic. le debtor.

And yet now it is holden by Sir Edw.Coke in Slades caſe, 4.part fol. 95.a. that he that is outlawed (in a perſonal action) ſhall forfeit ſuch debts and duties as were due to him by ſingle contract. See ibid.

Of things holden joyntly, or in common, See hic antea cap. 14. & Plo.323.& 343.& Br. Choſe in acco.2.

No goods lawfully diſtrained, nor goods letten or demiſed, nor goods pawned or pledged, ſhall be taken or ſeiſed for outlawry, untill the Leaſe be determined, or the rent or other ſatisfaction be yielded upon the diſtreſs, or the money paid for the pawn or pledge. 4.E.6. Br. Diſtr.75.& Fitz.Bar.121.22.E.4.

But goods bailed or delivered me to keep, if the bayloꝛ be outlawed, theſe goods may be ſeiſed and taken foꝛ the King.

If a man that is outlawed ſhall make me his executoꝛ and dieth, I ſhall be chargeable to the King foꝛ all theſe goods; and it ſeemeth the Kings Officers may ſeiſe them foꝛ the King. Vide 8. E. 4. fol. 6. b.

But no goods fixed oꝛ annexed to the freehold, ſhall be taken oꝛ ſeiſed foꝛ outlary; as a furnace, a table fixed to the ground with poſts, noꝛ wainſcot, doꝛs, windows, locks, pale, and the like. 20. H. 7. fol. 13. b. & 22. E. 4. fol. 12.

Deer in my Park ſhall not be foꝛfeited by Outlary in a perſonal action, by Vaviſor. 10. H. 7. fol. 7. 2. And yet by Brian 18. E. 4. 14. the King may kill them, and may diſpoſe of them to his uſe.

Charters oꝛ Evidences concerning Free-hold ſhall not be foꝛfeited by Outlary. 21. H. 6. fol. 1.

A Ward ſhall be foꝛfeited by Outlary. 33. H. 6. fol.

A Leaſe oꝛ term foꝛ years ſhall not be foꝛfeited by Outlary befoꝛe it beginneth (as it ſeemeth:) Foꝛ a man Outlawed if he getteth his pardon befoꝛe his term beginneth, yet he ſhall have his term by Red. 4. H. 7. fol. 10. b.

If the Grantee of an Annuity be Outlawed, befoꝛe the day of payment, the King ſhall have it, by Cat. tamen quere, foꝛ if he getteth his Chꝛ. of pardon befoꝛe the day of payment, there the King ſhall not have it; foꝛ that it was no duty befoꝛe. Danby.

In an action of Treſpaſs bꝛought againſt a Sheriff foꝛ taking of goods, he may juſtifie, foꝛ that an exigent of felony was directed to him, and that he took them thereupon; and ſuch Juſtification is good, although he ſheweth not that he had accompted foꝛ the ſame to the King. 3. H. 7. fol. 3.

And if that the Sheriff ſeizeth the goods, and hath accompted foꝛ them in the Exchequer, and after the Outlary is reverſed: here the parties remedy is only by Petition to the King. Stamf. 75.

In an action of Treſpaſs foꝛ carrying away goods, it is a good plea, that the owner was outlawed, and that he as ſervant to the Sheriff, and by his commandement took the goods. Br. Treſpaſs 339. 18. E. 4. fol. 9.

But note where the Lord of a Manoꝛ oꝛ Franchiſe, hath by Charter the goods of Felons, Fugitives, oꝛ Outlaws, &c. there the Sheriff oꝛ his Officers are not to ſeize oꝛ meddle with ſuch goods: And yet ſuch Lord muſt have them by Charter, and not to claim them only by preſcription oꝛ uſage: And ſuch Charter muſt be made within the time of memoꝛy, &c. (ſc. ſince the time of King Richard the firſt) and by plain and ſpecial woꝛds; oꝛ elſe ſuch Charter muſt have the aid and help of ſome other matter of Recoꝛd, within the time of memoꝛy.

memory, as allowance before the Juſtices in Eyre, or before the Juſtices of the Kings Bench, or (in ſome caſes) before the Juſtices of the Common Pleas, or before the Barons of the Exchequer, or by force of ſome confirmation by Charter of Record of ſome King or Queen within the time of memory: And it ſhall be only good for ſuch part of ſuch Charter, as hath been ſo allowed or confirmed. Coke 9.27.28.

If the Sheriff (or any other officer) ſhall wrongfully ſeize or take one mans lands, or goods, being of the ſame name with another that is outlawed; in ſuch caſe the party grieved, his executors or adminiſtrators may have a Writ de Identitate nominis directed to the Sheriff, &c. whereupon the party grieved ſhall find Sureties before, or to the Sheriff (or other officer which hath warrant to ſeize) to anſwer the King of the value of ſuch Lands, or goods and chattels, in caſe that he cannot diſcharge himſelf: And for this the Sheriff (or other officer) ſhall not take any thing of the party, but ſhall forthwith (upon Sureties found as aforeſaid) deliver to the party grieved his goods, &c. again, upon pain to loſe to the party grieved his double dammages, and beſides to be grievouſly puniſhed to the King, See the Statutes of 37.E.3.ca.2.& 9.H.6.ca.4. & Fitz.268. *Identitate nominis.* *Vic' prendr' ſureties.*

But the better to prevent ſuch miſtaking of one man for another, the Statute of 1.H.5.cap.5. hath ordained, that in every Original Writ of Actions perſonal, Appeals, and Indictments, in which the Exigent ſhall be awarded, there ſhall be additions to the Defendants name, ſc. of their Eſtate, degree, or Myſtery, and of the Town, and of the County, where they be converſant; And that for default thereof, all Outlaries thereupon ſhall be avoided. Co.6.67.& Br.Addition.4.14.& 19.

Yea if the Additions of the Town or County be falſe, the Outlary ſhall be avoided thereby. Dyer 213.

Nota per *Bracton* libro 3. Homo utlagatus foriſfacit patriam, amicos, quæ pacis ſunt, quæ legis ſunt, & quæ juris & poſſeſſionis ſunt. Vide *Stamf.* 196. M. ceo eſt d'eſtre intend, according to ſeveral natures de Outlaries: So that this is the nature of Outlary in Capital Offences (ſc. to forfeit and loſe his Country, his Friends, his peace, his poſſeſſions, the profits of his labours, and of his grounds) but in leſſer offences or contempts, the forfeiture is more eaſie, Vide Bracton lib.3. fol.128. b. And the ſame puniſhment were they to have who relieved or harboured them wittingly. See ibidem. *Regule.*

Que Outlary eſt un Judgement d'eſtre hors de Protection du Roy, & ſes Loyes. *Finch.*116.

Note alſo that when the Outlary with the Exigit is returned by the Sheriff into the Court, &c. then is it a good Utlary to diſable the party to ſue, &c. And yet before the Return, it is ſufficient and good for the King, and therefore the Kings Officers may ſeize to the Kings uſe the goods of the party Outlawed, &c. leaſt they be imbezelled. But the Sheriff may not ſell the parties goods before the Capias Utlagat, comes to him: Neither doth the Capias Utlag. warrant the Sheriff to ſell the goods. See hic cap.59.

Sur

Sur brief de Capias utlagat. *le vicont poet vender les biens del partie utlage; m.il plus ſuffement poet eux conſerve al oeps le Roy.* Co.5.90.b. Dyer 363.223.

Uncer ſi le utlary ſoit apres reverſe per bre.de Error, le deffendant avera reſtitution de ſes biens. Co.8.143.

Iſſint ſi les utlary ſoit reverſe per Plea, ou que ad chr. de pardon. vide Fitz.Retor.36.Scire fac.68. Error 62. Br.Chr.11.12. Error.56. Reſtitution 2.& utlar.5.& hic infra.

Mes ſi les biens dun home utlage ſont vend per le vicont, ſur briefe de Capias utlagat.*&c. & apres le utlarie eſt reverſe per brief de Error, le Defendant avera reſtitution de ſes biens, pur ceo que le vicont neſt compellable ne commaund de vender eux car per le* Capias utlagat. *le vicont eſt commaunde prender le corps,&c.* Et bona & catalla quæ per Inquiſitionem invenerit in manus noſtras, ut de vero valore,&c. Et ſic vide diverſitatem *inter meane acts & faits in execution de Juſtice que ſont compulſive,& acts que ſont voluntarie.* See hic poſtea Exec' per Fieri fac'. *& Returne ſuper Exigit.* Co.5.90.& 8. 143.

Vnc.ſi le vic.ad ſeiſe les biens dun home utlage,& ad accompt per eux in le Eſcheq.& apres le utlary eſt reverſe, in tiel caſe le party (ou deff.) ad nul remedy per ſes biens, m. tantum per petition al Roy. Stamf. de Prerog.76.

Vide 8. R. 2. Fitz. Superſedeas 19. Que ſ. utlary retorne ne pre per le vic.bre.iſſera al Eſcheat.de ſeiſer les biens & chattels,&c.

Ceſty que eſt utlage ſur Indictment de Treſpaſs al ſuit le Roy, ſera fine & ranſome (que eſt treble le fine al meines) Br. Utlag.37. vide Co.L.127.9. *fine & ranſome in legal underſtanding ſont tot.un.*

Si al temps del Exigent agard, le defendant ſoit in priſon, ouſter le meere, ou que le Exigent iſſera autrement erronice, uncore ſi le vicount ſeiſer ſes biens al oeps le Roy, le defendant unvera reſtitution de ſes biens, tanque le agard del Exigent ſoit defeate: Et pur ceo in tiels caſes, le defendant, ſes executors, ou adminiſtrators doient porter lour briefe de Error, de reverſer meſme le Exigent; car instant que le Roy eſt intitle (a les biens,&c.) per matter de record, il beſoigne que ceo ſoit avoid per matter de cy haut nature. Vide Co.5.111.43.E.3.f.17.& Fitz.Forf.19.31.& Plow.137.b.

Plea. *Uncore vide utlary reverſe per plea, ſans briefe de Error.* Br. Utlag.28. 31.47.75.77. & 79. Fitz. Index. tit. Utlag. & Dyer 223. Cor. L.259.

Auxi per le Stat.6.H.8.c.4. tots utlaries ewe contrary al dit Stat. ſerra avoide per Averrment, ſa. ſuer aſcun bre.de Error. Vide etiam Stat. 31.E. c.3.P.Exigt.5.& 15.

M.dent allowance d'aſcun bre. de Error, ou reverſing d'aſcun utlary per plee ou autrement.le deffendt.ſerra lye de appeare,& de reſponder le plt.en le form. ſuite, in un novel action, & de ſatisfier le Condempnation, &c. 31. Eliz. cap.3.

Pardon. *Si home ad charter de pardon portant date devant le Exigent, la les biens del party*

party ſont ſave per ceo, pur ceo que le cauſe del ſaving de eux, appiert de record. Co. 5. 111. Vide Stamf. 184.

Fitz. 247 g. *Mes nota, que devant pardon de utlary ſerra graunt, ſi le utlary fuit ſur original (devant ſon apparance) le party doit primes yeeld luy meſme al priſon, &c. Et ſi le utlary fuit apres judgement, le party doit primes agree ou le plaintife pur ſon det ou damages.* Vide Stat. 5. E. 3. c. 12. Fitz. Chre. de Pardon 27. & 28. & Fitz. Utlag. 4. Finch. 350.

Et ſi le Roy pardon home que viet ejus per Capias utlagatum, dent que le party ſoit ſatisfie, ſi ſoit apres judgmt. & le vic. luy ſuffer de eſcape, le plt. avera action vs. le vic. &c. adg. H. 36. Eliz.

Auxi cey que voile defeate un utlary per reaſon de impriſonment, doit yeald luy meſme al priſon, &c. 5. E. 3. c. 13.

Auxi nota que chre. de pardon ne ſa allow, tanq. le party utlage ad ſue un Scire facias de garner le party plt. & ſit appeare, donq. le deff. reſpondra luy, &c. vide Termes dl ley tit. utlary.

Note that the Sheriff, nor his officers, may not arreſt or attach the body of any man that is outlawed in any perſonal action, without a writ of Capias utlagat. firſt delivered to him; but otherwiſe it is where the utlary is for felony or treaſon. See Dyer 120.

And yet the King may impriſon the body of him that is outlawed in any perſonal action, untill he ſhall purchaſe his charter of pardon, to which purpoſe the ſaid writ de utlagato Capiendo is. Old na. bre. 168.

Auxi l'opinion in 1. E. 3. fol. 2. eſt que home ſoit utlage in perſonal action, che ſe un boyn pt. luy prend & detey.

Note alſo that the goods of perſons outlawed may belong to a Subject, by the Kings grant, but not by preſcription. Co. 9. 27. 29. Plo. 81. b.

There be other things belonging to the King, *quia non apparet dominus rerum*, in regard that the true proprietor or owner thereof cannot be known, as Treaſure-trove, Wreck, *&c.*

CAP. 16.

Treaſure trove.

Treaſure trove.

TReaſure trove dicitur, where money or coyn, gold, ſilver, plate, or bullion is found in any place, the owner thereof being unknown: and ſuch goods or treaſure the King is to have; and the Sheriff may

ſeiſe

ſeiſe it to the Kings uſe. And it ſeemeth to be all one, whether it were hidden in the ground, or only loſt. See Bracton 119.120. Br. Coron. 176. & Preſentments 24. & 27. aſſ. pl. 19. Finch.

Mr. Bracton lib. 3. ſaith, Occultatio theſauri inventi fraudulosa, eſt quaſi crimen furti. Eſt autem theſaurus, quædam vetus depoſitio pecuniæ, vel alterius metalli, cujus non extat modo memoria, ut jam dominum non habeat, & ſic de jure naturali ſit ejus qui invenerit: Alioquin ſi quis aliquid lucri cauſa, vel metus, vel cuſtodiæ, recondiderit ſub terra, non erit theſaurus, &c.

And ſo treaſure trove ſc. antiently hid in the earth, belongeth to the King; but not treaſure found upon the land, and not hid in the earth; nor treaſure found in the ſea, for ſuch belongeth to the finder, and not to the King. See Br. f. 26. Stamf. f. 40. a. Finch. f. 45.

But howſoever, non competit Domino Regi, niſi quando nemo ſcit quis abſcondit theſaurum, or *quando nemo ſcit cui le coyne trove apperteyne*: for if the owner thereof, or he which hid the ſame, be known, then he ſhall have the treaſure, coyn, or goods found; and if he die before it be found, then it ſeemeth his executors or adminiſtrators ſhall have the ſame. See Direlands caſe, M. 22. H. 6. Abr. d'aſſ. 69.

Alſo all Mines of mettall (except Mines of gold and ſilver) do appertain and belong to the owners of the ſoil wherein they are found; and the mines of gold and ſilver belong to the King. Br. Coron. 176. See Br. Prærogat. 134. & 137.

Alſo ſee Maſter Plowden fol. 314. &c. That if gold or ſilver be in Mines, or Ores of Copper, Tinn, Lead, or other baſe mettals, the whole Mint pertaineth to the King, ſc. all Mines of gold or ſilver, in which the gold or ſilver is of the greater value, belongeth to the King. Plo. 336. & Finch. fol. 45.

Nota que touts Mines Royal, ſoyent de pure Ore, or Argent, ou mixt, poent eſtre grant al Subject, per apt. parols. ne ſont inſeperablemt. incident al Corone. Plo. 336.

Le puniſhmt. pur Treaſ. trove priſe & emport, & de wreck de mere, & waiffe ſerra per impriſonment & fine, & ney de vie & member. Fitz. Coron. 187. & 265.

Wreck of the Sea.

Mr. Bracton lib. 3. fol. 120. ſaith, Wreckum dici poterit, quaſi derelictum, ut ſi quid (navis levandæ cauſa) à nave projectum fuerit ab aliquo, ſine animo retinendi vel repetendi, id proprie dici poterit wreckum cum res projecta habita ſit pro derelicta, &c.

Wreck. Wreck is by the Civilians called Naufragium, where a ſhip periſheth at the ſea. 3. E. 1. c. 4.

Concerning

Concerning wreck of the ſea, the Statute of Weſtminſter 1. (made Anno 3. Ed. 1. c. 4.) is thus; where a man, a dog, or a cat eſcape quick or alive out of the ſhip to the land, no ſuch ſhip or barge, nor any thing within them, ſhall be adjudged wreck; but that the goods ſhall be ſaved and kept by the view of the Sheriff (or Cozoner,) and ſhall be delivered into the hands of ſuch as are of the town where the goods are found; ſo that if any ſue for thoſe goods, and prove that they were his, within a year and a day, they ſhall be reſtored to him without delay; and if not, they ſhall remain to the King, (as belonging to him by his Prerogative) and ſhall be ſeiſed by the Sheriff, or Cozoner, and praiſed by a Jury, and delivered to the town, who ſhall anſwer therefore, &c. Vide officium Coronat. 4. E. 1. & Doct. & St. 156.157.

Br. Wreck. 2.

Comt. que les pol. dl ceo Stat. ſont tiels, ſc. ſoient les choſes gardes, &c. per q. pol. ſemble que le ville ne pt. prend. tiel biens ſans le view & delivery d'aſcun officer le Roy, vnc. ſemble que le ville pt ceo prend. ſa. aſcun delivery al officer; & auxi que le vic. poet ceo prend. ſans Committer le Cuſtody dl eux al ville.

Note that if the goods within ſuch a ſhip, be of that ſort that they cannot be kept ſweet and good by the ſpace of a year, there the Sheriff, or officer, may ſell ſuch goods, and deliver the money taken for them, to the town to keep and anſwer for them. But if the goods were ſuch as might be kept a year, there the goods ſhall be kept and preſerved during the year, or elſe the officer is puniſhable, &c. Plo. 466.

Do. & Stu. c. 51.

By the Common Law if goods were wrecked, they were immediately (and ipſo facto) forfeited: And now by the former Statute of Weſtminſter 1. c. 4. the party ſhall have a year and a day to prove his property, if a man, a dog, or a cat ſhall eſcape to land out of the ſhip alive: but if nothing eſcape out of the ſhip alive, it ſeemeth that the goods wrecked are preſently forfeited to the King, ſo as the owner ſhall not be admitted to prove his property, for that this proof within the year and day is given only where ſomething eſcapeth alive. See Termes of the Law, & Br. Wreck. 3.

Br. Wreck. 3.

Where wreck belongeth to another than to the King, he ſhall have it in like manner as the King ſhould; but there the Sheriff is not to meddle therewith: As where the Lord of any Liberty, Franchiſe or Mannor, hath wreck granted by Charter, &c. or hath had any wreck by Preſcription, &c. for otherwiſe the King by his Prerogative ſhall have the wreck of the Sea throughout the Realm. 17. E. 2. c. 11.

27. E. 3.

But by the Statute made 27. E. 3. c. 13. if any ſhip ſhall periſh on the ſea, and the goods come to land, which be no wreck, the owner ſhall be required to prove the ſaid goods to be his own; and upon proof thereof they ſhall be preſently delivered, paying to them that have ſaved and kept the ſame, convenient for their travel, by the diſcretion of the Sheriff, or other officers, with the aſſent of four or ſix of the beſt or moſt ſufficient diſcreet men of the Country.

Walter Bracton lib. 3. ſaith thus hereof, Item magis propriè dici poterit wreccum, ſi navis frangatur, & ex qua nullus vivus evaſerit, Et maxime, ſi dominus rerum ſubmerſus fuerit: Et quicquid inde ad terram

venerit, erit domini regis: And therewith agreeth the Book of Entries fol. 611. 612. tit. Treſpaſs in Wreck. And accordingly alſo it was adjudged in Sir Henry Conſtables caſe, Co. lib. 5. fol. 106. that nothing ſhall be ſaid to be Wreccum Maris, but ſuch goods only, which are caſt, or left upon the land by the ſea: For Wreccum Maris ſignifieth, illa bona quæ naufragio ad terram appelluntur. Sed quæ in mari longius à littore inveniuntur ita quod conſtare non poſſit ad quam terram vel regionem eſſent applicanda, tunc quicquid ita inventum fuerit, erit inventoris, &c. quia non eſt aliquis qui inde privilegium habere poſſit; Rex non magis quam privata perſona, &c. Bracton fol. 120. Co. 5. 106.

Note que wreck de mere ſerra trye per le com. lej, & ney. per le Admirall. 15. R. 2. c. 3.

There be other caſuall profits of like nature, as *Flotſam, Jetſam*, and *Lagan*.

Flotſam. Flotſam, is where a ſhip is drowned, or otherwiſe periſheth, and the goods float upon the ſea, or ſwim upon the water, ſc. upon the top of the water. vide Minſh. Co. Ibid.

Ietſam. Ietſam, cometh of the French word *Ietter*, to caſt out, and is when a ſhip is in perill to be drowned, and for to disburden the ſhip, the goods are caſt into the ſea, and after the ſhip notwithſtanding periſheth. Co. Ibid.

Lagan. Lagan, vel potius Ligan, is when the goods are ſo caſt into the ſea, (ſc. to disburden the ſhip, &c.) and after the ſhip periſheth, and thoſe goods ſo caſt out, are ſo heavy that they ſink to the bottom, and the Mariners, to the intent to have them again, do tie unto the ſaid goods a cork, or other thing which will not ſink, ſo as they may find them again; and they are called Ligan à Ligando. Co. Ibid.

And ſo note that wreck is when the goods are by the ſea caſt upon the land, and ſo infra comitatum, whereof the Common Law taketh conuſance; but the other three (Flotſam, Ietſam, and Lagan) are all upon the ſea, and therefore of them the Lord Admirall hath juriſdiction. Co. Ibid.

Note alſo that none of thoſe goods which are called Flotſam, Ietſam, or Lagan, ſhall be wreck ſo long as they remain in, or upon the ſea; and being upon the ſea, quære if they are not due and belonging to the Lord Admirall by vertue of his Letters Patents.

But if any of them ſhall be caſt upon, or driven to the land by the ſea, then they ſhall be called and ſaid to be wreck, and ſo the King ſhall have them; or any other Lord, &c. by grant of wreck from the King may have them, for that they being caſt upon the land, will paſs by the grant of wreck. Co. 5. 106.

And the King ſhall have Flotſam, Ietſam, and Lagan, (remaining in or upon the ſea, ſc.) when the ſhip periſheth, or when the owner of the goods is not known. Co. 5. 107.

Note

Co.5.117. Note that the ſhip muſt periſh, or elſe the goods cannot be ſaid to be wreck. But though the ſhip periſh, yet if any of the heire, advouſons, eſcape, the law ſayeth that they have the cuſtody of the goods, they are not wreck, nor forfeited. 11. H. 7. Br.

If the ſhip be broken by tempeſt, and the goods caſt upon the land, they are not wreck. Fitz. 112. c.

So if goods are caſt into the ſea for doubt of a tempeſt, they are not wreck, nor forfeit. 46. E. 3. fol. 15. And therewith agreeth maſter Bracton lib. 2. Res habita eſt pro derelicta ubi dominus ſtatim deſinit eſſe dominus; ſi autem cauſa navis alleviandæ, non ſic, quia non ea voluntate ejecit quis, ut deſinat eſſe dominus, &c.

Co. Ibid. Alſo in Sir Henry Conſtables caſe aforeſaid, it was adjudged, that the afore recited Statute made 3. E. 1. concerning wreck, was but a declaration of the Common Law; and all that is therein contained concerning wreck, ſhall be alſo extended to Flotſam, Ietſam, and Lagan: And that if the owner of ſuch goods ſhall prove that they were his, within a year and a day, they ſhall be reſtored to him; and if the owner dyeth, his executors or adminiſtrators making proof that they were their teſtators, &c. they ſhall be reſtored to them.

Note that the year and day in ſuch caſes ſhall be accounted from the time of the taking or ſeiſure of ſuch goods as wreck; for although that the property be in law veſted in the Lord before ſeiſure, yet untill the Lord (by his officers or ſervants, &c.) ſeiſeth them, and taketh them into his actual poſſeſſion, it is not known either who claimeth the wreck, or to whom the owner ſhall reſort to make his claim, and to ſhew his proofs. *Vide quel manr de proofes le owner fera.* Co.5.108.a.

Co. Ibid. If the wreck belongeth to the King, the owner may have a commiſſion to hear and determine the truth of ſuch proofs as the owner ſhall bring, &c. which muſt be by a Jury of twelve men.

Alſo it was there holden, that the King ſhall have Flotſam, Ietſam, and Lagan, by his prerogative, although they ſtill remain in, or upon the ſea; (for the ſea is of the Kings ligeance, and parcel of his Crown of England, &c.) and yet another may have them by the Kings grant. Co. ibid.

Co.5.108. Note that at the firſt the Common Law gave as well wreck Flotſam, Ietſam, and Lagan upon the ſea, as Eſtraies, Treaſure trove, and the like to the King: for that by the rule of the Common Law, when no man can claim property in goods, the King ſhall have them by his prerogative.

Alſo note that wreck is an eſtray upon the ſea, coming to land, as an eſtray of any beaſt is upon the land coming within any priviledged place or leigniory, &c. And the Law giveth in both caſes (ſc. in caſe of wreck and eſtray) a year and a day to the owner to claim them. Co. 5.108. & Finch. 45.

Alſo if the goods of an infant, woman covert being an executrix, a man in priſon, or of a man beyond the ſea, ſhall be wrecked at the ſea,

ſeiſe it to the Kings uſe. And it ſeemeth to be all one, whether it were hidden in the ground, or only loſt. See Bracton 119.120. Br. Coron. 176. & Preſentments 24. & 27. aſſ. pl. 19. Finch.

Mr. Bracton lib. 3. ſaith, Occultatio theſauri inventi fraudulosa, eſt quaſi crimen furti. Eſt autem theſaurus, quædam vetus depoſitio pecuniæ, vel alterius metalli, cujus non extat modo memoria, ut jam dominum non habeat, & ſic de jure naturali ſit ejus qui invenerit: Alioquin ſi quis aliquid lucri cauſa, vel metus, vel cuſtodiæ, recondiderit ſub terra, non erit theſaurus, &c.

And ſo treaſure trove ſc. antiently hid in the earth, belongeth to the King; but not treaſure found upon the land, and not hid in the earth; nor treaſure found in the ſea, for ſuch belongeth to the finder, and not to the King. See Br. f. 26. Stamf. f. 40. a. Finch. f. 45.

But howſoever, non competit Domino Regi, niſi quando nemo ſcit quis abſcondit theſaurum, or *quando nemo ſcit cuis le coyne trove appertayne*: for if the owner thereof, or he which hid the ſame, be known, then he ſhall have the treaſure, coyn, or goods found; and if he die before it be found, then it ſeemeth his executors or adminiſtrators ſhall have the ſame. See Direlands caſe, M. 22. H. 6. Abr. d'aſſ. 69.

Alſo all Mines of mettall (except Mines of gold and ſilver) do appertain and belong to the owners of the ſoil wherein they are found; and the mines of gold and ſilver belong to the King. Br. Coron. 176. See Br. Prærogat. 134. & 137.

Alſo ſee Walter Plowden fol. 314. &c. That if gold or ſilver be in Mines, or Ores of Copper, Tinn, Lead, or other baſe mettals, the whole Mint pertaineth to the King, ſc. all Mines of gold or ſilver, in which the gold or ſilver is of the greater value, belongeth to the King. Plo. 336. & Finch. fol. 45.

Nota que touts Mines Royal, ſoyent de pure Ore, or Argent, ou mixt, poent eſtre grant al Subject, per apt. parols, ne ſont inſeperablemt. incident al Corone. Plo. 336.

Le puniſhmt. pr. Treaſ. trove priſe & emport, & de wreck de mere, & waiffe, ſerra per impriſonment & fine, & ney de vie & member. Fitz. Coron. 187. & 265.

Wreck of the Sea.

Mr. Bracton lib. 3. fol. 120. ſaith, Wreckum dici poterit, quaſi derelictum, ut ſi quid (navis levandæ cauſa) à nave projectum fuerit ab aliquo, ſine animo retinendi vel repetendi, id proprie dici poterit wreckum cum res projecta habita ſit pro derelicta, &c.

Wreck. Wreck is by the Civilians called Naufragium, where a ſhip periſheth at the ſea. 3. E. 1. c. 4.

Concerning

Concerning wreck of the ſea, the Statute of Weſtminſter 1. (made Anno 3. Ed. 1. c. 4.) is thus; where a man, a dog, or a cat eſcape quick or alive out of the ſhip to the land, no ſuch ſhip or barge, nor any
Br. Wreck. 2. thing within them, ſhall be adjudged wreck; but that the goods ſhall be ſaved and kept by the view of the Sheriff (or Cozoner) and ſhall be delivered into the hands of ſuch as are of the town where the goods are found; ſo that if any ſue for thoſe goods, and prove that they were his, within a year and a day, they ſhall be reſtored to him without delay; and if not, they ſhall remain to the King, (as belonging to him by his Prerogative) and ſhall be ſeiſed by the Sheriff, or Cozoner, and praiſed by a Jury, and delivered to the town, who ſhall anſwer therefore, &c. Vide officium Coronat. 4. E. 1. & Doct. & St. 156.157.

Comt. que les pol. dl ceo Stat. ſont tiels, ſc. ſoient les choſes gardes, &c. per q. pol. ſemble que le ville ne pt. prend. tiel biens ſans le view & delivery d'aſcun officer le Roy, vnc. ſemble que le ville pt ceo prend. ſa. aſcun delivery al officer; & anxi que le vic. poet ceo prend. ſans Commitier le Cuſtody dl eux al ville.

Note that if the goods within ſuch a ſhip, be of that ſort that they cannot be kept ſweet and good by the ſpace of a year, there the Sheriff, or officer, may ſell ſuch goods, and deliver the money taken for them, to the town to keep and anſwer for them. But if the goods were ſuch as might be kept a year, there the goods ſhall be kept and preſerved during the year, or elſe the officer is puniſhable, &c. Plo. 466.

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Note alſo that none of thoſe goods which are called Flotſam, Ietſam, or Lagan, ſhall be wreck ſo long as they remain in, or upon the ſea; and being upon the ſea, quære if they are not due and belonging to the Lord Admirall by vertue of his Letters Pattents.

But if any of them ſhall be caſt upon, or driven to the land by the ſea, then they ſhall be called and ſaid to be wreck, and ſo the King ſhall have them; or any other Lord, &c. by grant of wreck from the King may have them, for that they being caſt upon the land, will paſs by the grant of wreck. Co. 5. 106.

And the King ſhall have Flotſam, Ietſam, and Lagan, (remaining in or upon the ſea, ſc.) when the ſhip periſheth, or when the owner of the goods is not known. Co. 5. 107.

Note

Co.5.117. Note that the ſhip muſt periſh, or elſe the goods cannot be forfeit, nor ſaid to be wreck. But though the ſhip periſh, yet if any of the ſervants eſcape, the law ſayeth that they have the cuſtody of the goods, and ſo they are not wreck, nor forfeited.

If the ſhip be broken by tempeſt, and the goods caſt upon the land, they are not wreck. Fitz.112.c.

So if goods are caſt into the ſea for doubt of a tempeſt, they are not wreck, nor forfeit. 46. E. 3. fol. 15. And therewith agreeth maſter Bracton lib. 2. Res habita eſt pro derelicta ubi dominus ſtatim deſinit eſſe dominus; ſi autem cauſa navis alleviandæ, non ſic, quia non ea voluntate ejecit quis, ut deſinat eſſe dominus, &c.

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Note that the year and day in ſuch caſes ſhall be accounted from the time of the taking or ſeiſure of ſuch goods as wreck; for although that the property be in law veſted in the Lord before ſeiſure, yet untill the Lord (by his officers or ſervants, &c.) ſeiſeth them, and taketh them into his actual poſſeſſion, it is not known either who claimeth the wreck, or to whom the owner ſhall reſort to make his claim, and to ſhew his proofs. *Vide quel maner de proofes le owner ſera.* Co.5.108.a.

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Alſo it was there holden, that the King ſhall have Flotſam, Ietſam, and Lagan, by his prerogative, although they ſtill remain in, or upon the ſea; (for the ſea is of the Kings ligeance, and parcel of his Crown of England, &c.) and yet another may have them by the Kings grant. Co.ibid.

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Alſo note that wreck is an eſtray upon the ſea, coming to land, as an eſtray of any beaſt is upon the land coming within any priviledged place or leigniory, &c. And the Law giveth in both caſes (ſc. in caſe of wreck and eſtray) a year and a day to the owner to claim them. Co. 5.108. & Finch.45.

Alſo if the goods of an infant, woman covert being an executrix, a man in priſon, or of a man beyond the ſea, ſhall be wrecked at the ſea,

if they be not claimed and proved to be theirs within the year and day, they shall be all forfeit, &c. For the Law is strict and binding in this case, as well as in case of an estray, (whereof see antea tit. estray.)

By the Statute de Prærogativa Regis (made Anno 17. E. 2.) the King shall have wreck of the sea throughout the Realm (except in certain places priviledged by the King) which Statute also is but a declaration of the Common Law: Co. 5. 108. 17. E. 2. c. 11.

Whales, &c. Also by the same Statute of Prerog. Regis, the King shall have Whales and great Sturgeons taken in the sea, or elsewhere within the Realm, (except in certain places privileged by the King) which was also the Common Law before the said Statute. Co. 5. 108. Plo. 315. Br. lib. 3. 120.

Also it seemeth by the Common Law, that the King (by his Prerogative) shall have other fishes Royal taken in the Sea, or elsewhere within this Realm, as the Porpus, &c. 39. E. 3. Br. Prerog. 35. for the excellency of the person of the King doth draw and appropriate unto him the things of excellency. Plo. 315. vide Br. Prerog. 35. *q. le privo. avera.*

CAP. 17.

Wards.

Wards and Escheats. By the Statute de Scaccario, made Anno 51. H. 3. Sheriffs shall seise and keep all such Wards and Escheats (that are not in fees) as belong to the King, which be within their shires; and of the issues thereof they shall be answerable in the Exchequer, when they account for their Counties; and they might let to Farme, or otherwise, such Wards and Escheats, &c. and might seise their bodies, &c. 51. H. 3.

Also by the Statute made 2. & 3. E. 6. c. 34. it seemeth that Sheriffs shall be accountable for all Wards marriages, and reliefs; and for all fines, for alienations and intrusions made by the Kings tenants within their County. 2. Ed. 6.

But by the Statutes made 32. H. 8. c. 46. & 33. H. 8. c. 22. & 34. H. 8. c. 46. all the Kings Wards are to be within the order, survey, and governance of the Court of Wards; together with their lands, rents, and issues thereof. And the Escheator is now the Officer appointed to enquire thereof, and to seise the lands, &c. But at this day the Escheator doth not, nor cannot seise, untill there be an Office first thereof found, &c. Stamf. de Prerog. 78. b. vide Br. Office deut Esch. 12. 14. 55. & 60. Intrusio. 18. Prerog. 30. Co. 8. 169. & 9. 95. 32. H. 8.

The King (by his Prerogative Royal) shall have the wardship of all their lands, which hold of him in chief by knights service, whereof the tenants were seised in their demesne as of fee, the day of their death, of whomsoever they hold, &c. 17. E. 2. c. 1.

Also

Alſo the King by his Prerogative of the wardſhip of the heire, ſhall have rent charges, commons, eſtovers, annuities, advoulons, offices, and the like which deſcend, &c. to the heire: 12. H. 7. Br. Prerog. 63.

Nota le poſſeſſion en ley d'un chattell eſt veſt in le Roy ſa. aſcun office trove, & per ceo on le Roy eſt entitle al wardſhip, ou Primer ſeiſin, le officer le Roy pt. ſeiſer & prend les profits al uſe le Roy. Stamf. de Prerog. fol. 54. a.

CAP. 18.

Eſcheates.

NOte that Eſcheats do happen two manner of waies. 1. Per defectum ſanguinis. 2. Per delictum tenentis. ſc. by attainder. Co. L. 13.

De haut Treaſon, le Roy avera le eſcheat, de quocunque tenuerit, 22. Aſſ. *Eſcheats.* pl. 49. Br. Eſcheat 14. Stat. 25. E. 3. c. 2. 26. H. 8. 13.

M. ceo eſt quant l'offend. ſont atteynt duell lo. vies. 34. E. 3. c. 12.

Alſo this muſt be underſtood of ſuch lands whereof the perſon attainted was ſeiſed. Co. L. 13.

Ou le tenant eſt attaint de felonie, il eſt al election del ſeignior d'aver briefe de eſcheat, ſuppoſe que le tenant fuit attaint de felonie, ou que il devie ſans heire, car per l'attainder le ſanke eſt corrupt, 48. E. 3. fol. 2.

Si home fait felonie, & puis purchaſe terre, ou terre diſcend a luy apres, ceux terres ſont forfeit & eſcheat, cybien come le terre que il avoit al temps del felonie fait, ibidem.

Br. Eſch. 29. *Home attaint de hereſie, ſon terre ne eſcheater, ſi non que il ſoit miſe al execution; & donque ſi le terre ſoit tenus del Roy, il avera le eſcheate. Auxy ſi le terre tenant fuerit de Ordinario, donque le Roy avera ceo per eſcheate, per Statut° 2. H. 5. c. 7. mes ceſt Stat° eſt repeale per Stat° 1. Ed. 6. c. 12. & per Stat. 1 Jac. c. 12.*

Si home ſoit miſcreant, ſa terr eſcheat al ſig. 5. R. 2. Fitz. Triall. 54.

Roy avera les eſcheates del tenants, del Archeveſques, & Eveſques in temps de vacation, 17. Ed. 2. c. 14. vide hic antea Forfeit.

Roy avera le eſcheate de touts les tenements in London, de quocunque ils ſont tenus; 49. Ed. 3. 5. Fitz. Prerogat. 15.

Omnes eſcaetæ civitatum mero jure pertinent domino Regi, de quibuſcunque feod. tentæ ſunt, 8. Ed. 2. Fitz. Eſch. 12. Finch.

Alien

Alien nec ad iſſue ſits, & puis eſt fait Deniſen, & purchaſe terre & devie, ſiel ſits navera le terre, mes Eſcheater.

Home ala ultra mare, extra alledg' Regis, ſine licentia Regis, & la eſpouſa feme, & ad iſſue fits illonque, & devie la, ſiel iſſue ne inheriter, mes le terre eſcheater, Br. Eſch. 8.

Fits eſt attaint de felonie in vie le pere, & happa Charter de pardon, le pere devie, & le fits ſurvive, le terre Eſcheater, ibidem.

Le eigne fits eſt attaint de felonie, puis ſon pere devie, le terre le pere Eſcheater. 49. Ed. 3. Br. Diſcent. 7.

On heire fault per demy ſanke, on de part le pere, &c. le terre Eſcheater. ibidem.

Terre taile ne eſcheater pur le felonie, on per le attainder del pere. 29. Aſſ. pl. 61.

Rent ne Eſcheater, car le terre eſt tenus, & nemy le rent.

Nota que ſi tenant le Roy devie ſans heire, & nul enter, le franktenement eſt in le Roy, ſans office, on entre, car franktenement ne poet merger. 9. H. 7. fol. 2. Br. Eſcheat 25. & 33. Plow. 229. b. *Et en tiel caſe, le Roy a ſon pleaſure poet enter, on ſeiſe per ſon Officer.* Stamf. de prerog. 54. a.

By the Statute *de Scaccario*, Sheriffs ſhall ſeiſe the Eſcheats that fall, to remain unto the King in fee, and ſhall certifie the King of them without delay. 51. H. 3.

But quære what the Office or authority of a Sheriff is, at this day, concerning Wards, or Eſcheats; for the Eſcheators Office is properly to look to Wardſhip, Eſcheats, and other caſualties belonging to the Crown. Co. L. 13. Plus hic c. 6. 7. & 14.

CAP. 19.

Ideots.

IDeot quis. Vide Co. 4. 126. Co. L. 247. Stamf. 35.

Ideots. If there ſhall be an Ideot (ſc. a natural fool, à Nativitate) there may be a writ awarded to the Eſcheator, or to the Sheriff, of that County where ſuch Ideot is abiding, both to examine him, as alſo to enquire by a Jury, &c. of ſuch Ideot, and of his lands, &c. Fitz. 232. 233. Stamf. de prerog. fol. 34. Regiſt. 266. 267.

But there can be no ſeiſure of the lands, &c. without an office firſt found. Stamf. ibid. 55.

La Stat. de Prerogativa Regis, eſt quod Rex habebit Cuſtodiam terra- 17. E. 1. c. 9.

rum

rum fatuorum naturalium, capiendo exitus eorundem, &c. *Et comment que le dit ſtat. dit* Cuſtodiam terrarum, *nemore le roy avera tibien le cuſtodie del corps, biens, & chateux del Ideots come de lour terres, &c. & cybien ceux terres que il ad per purchaſe, come ceux que il ad come heire, &c.* Co. 4. 126.

Et nota que le Roy avera le Cuſtody de tiel Ideots dutz le vies, C. les prol. dl ſtat. ſont, & poſt mortem eorum reddat eam rectis heredibus. Stamf. de prerog. 34. 35.

Sed inveniet (Dominus Rex) eis neceſſaria. ſc. le Roy doit provider pur le maintenance de tiel Ideot, ſa feme, children & family. 17. Ed. 2. c. 9. Stamf. 35. 37.

But note that all Ideots and natural fools, and their lands, &c. ſhall alſo be in the ordering of the Court of Wards, &c. Stat. 32. H. 8. c. 46. Stamf. 36.

And the King ſhall here be anſwered of the iſſues of their lands, but from the time of his title found by office. Co. 8. 170. Stamf. 84. & 34.

And the King ſhall have to his own uſe the poſſeſſions of an Ideot or fool natural, and the King may let the ſame to farme rendring a rent. Finch. 95.

Mes le Roy navera le Cuſtodie del terre, que le Ideot teigne per copie, car ceo neſt que eſtate a volunt, &c. Co. ibidem.

Auxi le Roy ne pt. aver tiel tr. al q. le Ideot ad title pro Entrer un alien. Finch. 95.

Auxi le Roy navera les profits del terre, &c. *forſque apres office trove; car per l'office appiert de record que le Roy ad droit de ſeiſer les terres.* Co. 8. 170. Stamf. de Prerog. 34.

Et ſic nota que le Roy ſeiſera le terres de Ideots, & heire fuera liverer; mes autrement eſt de terres de Lunatikes, & de terres del Ideot per accident ou infirmity, Co. 4. 126. & Br. Ideot 5. Stamf. 34. & 37.

Lunaticks le Roy protect. eux, & prend. les profits de lour terr, & biens, & ove ceo mainteyn. le lunatike & ſon family; Mes le Roy ne prend aſcun pt. des profits, &c. *a ſon beps demeſne.* 17. E. 2. c. 10. Co. 4. 127.

Quel perſon ſerra dit Ideot, & quel Lunatique, vide Co. 4. 124. 128. Fitz. 233. b.

Le manner del Triall del Idiot. Vide Co. 9. 31. Stamf. 34. & Fitz. 233. b.

Si un ſoit trove Ideot, que tenens n'eſt iſſint, Comm. il avoid. cel aſſer. Vide Fitz. 233. a. Et Stamf. de prerog. 36.

Que avera le ordering, &c. *del terres del Ideote,* vide Stat. 32. H. 8. c. 46. P. Prerogat. 10. & Wards 27.

Laſtly

Lastly the words of the Sheriffs oath are, You shall truely keep the Kings rights, and all that belongeth to the Crown; Now these former, and other the Kings Prerogatives of the like kind, although they are a great part and portion of the rights, profits, and commodities of the Crown, yet this Prerogative doth not only extend to such benefit and profits as the King is to have from his Subjects; But also to the Kings person, to free it so that it shall not be subject to any mans suit; And also to his possessions, so that they may not, nor cannot be taken from him by any violence, or wrongfull disseisin; And to his goods and chattels, so that they are under no tribute, tolle, or custome, nor otherwise distrainable. Stamf. prerog. 5. And in all these and other the Kings Prerogatives, the Sheriff is to do his best endeavour for the keeping and preserving thereof, so far forth as belongeth to his office. Plus Stamf. 74. 75. vide Ass. tit. Prærog. 45. 58. 59. 60.

For the Kings person, See hic c. 22. & Br. Petitio. 12. 28.

For his possessions or his lands, that they be not to be extended or taken in execution, See hic c. 26.

That his lands are exempted from distresses for rent, &c. ibid. & Stamf. 75. vide Ass. tit. Distress. 12.

That his goods cannot be taken for waifes, or estrayes, or for wreck. Ass. tit. Pretog. 44. & Br. wreck. 2. Plo. 243. b.

That the King shall find no pledges *de Prosequendo*, hic c. 52.

That the King shall not be amerced being non-suite. Co. 8. 61. Br. Amercement. 53. Fitz. 31. f. & 101. a.

CAP. 20.

Direction and Execution of Writs.

Aque brēves serrent direct.

THe office of a Sheriff consisteth chiefly in the execution and serving of Writs and Process of Law, to compell men to appear to answer to the Law; and also for taking of mens bodies, goods, or lands, according to judgements given in superior Courts: and to do this he is the immediate Officer of the King and all his Courts (*sc.* to execute the Writs of the Common Law:) And he is sworn that he shall truly do this, and he must do this without any favour, dread, or corruption. Dyer 60. b. Plow. 74.

Al Vicont.

By the antient Law of this land, all Original Writs (purchased at the suit of the party to maintain actions) are to be directed to the Sheriff of the County where the cause of the suit doth arise; and can not be directed to any other person than the Sheriff, unless it be in special cases where there shall be good cause of exception to or against the Sheriff, and there the Writ shall be awarded to the Coroner, who then standeth in the place of the Sheriff. Co. 3. Pref. Br. offic. 2. Finch 53.

Et

Et per ce Action de Debt ſes eſcape pt. ee. pt. en le County (ſc. direct al vic. dl County) lon le Arreſt, ou eſcape ſt. mes nemy in aſcun auter County. Mes Treſpaſs de Battery, bien emports, ou eſcripts enfreint, pt.ee. in aſcun County, c.c. ne ſont locall: Aus. de herbes debruiſe, Arbres ſuccide, ou tiel. il. ſa. pt. in lo. prop. County. 14. E. 4. fol. 4. 2. Mar. Br. Attaint. 104. & Finch. 53.

Auxi per le Stat. 6. R. 2. c. 2. *eſt ordeyne, q. bre. de Debt, de Accompt, & tots auters tl. ſemble quecunque ſa direct al vic. dl County l'on le contract d'action commence; & ſi ſoit mre. in le plea, ſur les dits briefs, q. le contract ſe fiſt in aut. County, que in le bre. Original ſoit conteyne, incontinent, le bre abater.* Vide Fitz. bre. 18. 23. 44. 649. & Br. Exami. 2. & viſne i.

Alſo where it is alleadged by either party (ſc. by the plaintiff or defendant, &c.) that the Sheriff is coſen or otherwiſe of kindred, or tenant to the other party, and the other party doth not deny this: in ſuch caſes proceſs ſhall be directed to the Coroners of that County, and ſhall be executed by them. Br. Chall. 78. Officer 14. & Proces 63. 70. Dyer 188. 300. & 376. *Al Coroners.*

12. H. 4. 14. 8. H. 6. 28. So where the Sheriff is a party to the ſuit, the proceſs ſhall be directed to the Coroners. Keilw. 96.

9 H. 6. 10. 14. H. 6. 1. 21. H. 6. 18. 34. H. 6. 29. 3 H. 6. 12. 28. 12. H. 4. 34. And yet you may obſerve much contrariety in our books herein, for ſome hold a difference where the Sheriff is plaintiff, and where defendant; for where he is plaintiff, the proceſs ſhall be directed to him againſt the defendant, and he may ſerve it himſelf (ſc. the ſummons and Capias, and other like original proceſs ſhall be directed to him againſt the defendant) except the pannel of the array which he ſhall not make; and except where he is named Sheriff in the Writ, for there the Coroners muſt execute it: And it ſeemeth that the Writ to the Coroners in ſuch caſes is, that the Sheriff ſe non intromittat. 18. E. 4. 7. See Br. Proceſs 9. 14. 40. 58. & 118.

Br. Proceſs 9. 65. 145. And where the Sheriff is plaintiff (and not named Sheriff in the Writ, there) he may ſerve the proceſs, ſc. the ſummons, Capias, and the like, upon the defendant, and he or his Underſheriff for him may afterwards put in pledges (de proſequendo) in the Chancery, or in the Court of Common Pleas where the Writ dependeth; and when they come to iſſue, he, or the defendant may ſhew that he is a Sheriff, and then the venire facias ſhall be directed to the Coroners. Keil. 96. for the venire facias.

And yet ſee Br. Proceſs 60. & 106. 118. 140. the contrary, ſc. that the proceſs ſhall go to the Coroners, whereſoever the Sheriff is a party, and that there ſhould be no diverſity where he is plaintiff, and where defendant, and that he may neither ſerve proceſs upon himſelf, nor for himſelf: Ideo quære.

9. H. 6. 10. If the Sheriff be defendant, he cannot ſerve the proceſs upon himſelf: 2. H. 6. 12. 8. H. 6. 30. 9. H. 6. 10. Bro. proceſs 9. Neither can he diſtrain nor ſummon, or warn himſelf. Finch. 6. & hic c. 45.

And yet the books vary in this alſo: See 18. H. 8. 3. Fitz. & Regiſter. 81. b. & Thel. 107. 108. vide Plow. Wimbiſh his Caſe, an original

Writ, *de assise de novel disseisin*, directed to the Coroners, was adjudged good, in regard that assises ought to be speedy, &c. But otherwise there seemeth a difference between other Writs original, that they in all or most cases shall be directed to the Sheriff, but that Judicial Writs may be directed to the Coroners: See Plow. 74.

But (in an Assise of *Novel disseisin*) if the Sheriff (by craft to have the Writ directed to the Coroners) be named one of the disseisors where indeed he is no disseisor, nor ever was disseisor or tenant of the lands in demand, the tenant in the said Assise may aver this covin, or the Sheriff may shew this matter and covin to the Court, and pray that it may be enquired of; and if it be found that the Sheriff was no disseisor, but was named disseisor by collusion, then shall the Writ be abated, and the plaintiff in the grievous mercy of the King: 11.H. 6.c.2. Fitz.N.Br.155.a.

Default. Also in some cases where the Sheriff maketh default of serving the process, it shall be directed to the Coroners: See Fitz. Proces 48, 51. Br. officer.43. & Fitz.fol.54.e.

And in some cases process (sc. an attachment) shall be directed to the Coroners against the Sheriff, for his default in not serving or returning process, &c. Fitz.54.e.62.a.64.b.68.e.98.c.

Partiality. So where partiality is found in the Sheriff in returning the Array (or Jury) partially, and thereupon the Jury is quashed, there process shall go to the Coroners, and in such cases also the Writ to the Coroners is that the Sheriff shall not intermeddle: 18.E.4.fol.3. See Dyer 188. Co.L.138. Br.Proces 155. Co.10.103, 104.

And yet where any are returned or put in the Pannel by the Undersheriff, or by the Bayliff which are partial or favourable, &c. and the Array shall be quashed for that cause, by some opinions the Sheriff shall make the new Array, for that there was no default in him. 28.Ass.Pl.

But others hold the contrary, for that this shall be intended the Sheriffs own act, and so it appeareth by the Retorne; for therein the Sheriff maketh no mention that he did write to his undersheriff, or Bayliff, as to a Bayliff of Franchise, &c.

But if the Sheriff be dead or removed, or that otherwise there be no Sheriff, there the process shall not be directed to the Coroners, but shall stay untill another Sheriff be chosen; for that the Sheriff being the immediate officer to the Court, process shall not go to the Coroners but only in special cases; as where it is alledged that the Sheriff is of kindred, or tenant to either party, or that the Sheriff is party to the suit, ut supra, or that the Sheriff made default, or is found partial, ut supra, in such cases process shall be directed to the Coroners, and otherwise not. Br.Proces 7.

If the venire facias be awarded to the Coroners, where it ought to have been directed to the Sheriff, or è converso (and so the Jury be returned by such as have no authority) it is error; and is not remedied by the Statutes of Jeofailes: Co.5.36.& 8.162.163. Dyer 367. Pl.40.

Note

Note where the Original Process is once directed to the Coroners, all the residue of the process in that suit shall ensue the original, and shall likewise be directed to the Coroners, yea although that Sheriff be removed, or dead, or acquited, and another indifferent Sheriff be chosen, depending that suit and process: See Br. Process 4. 73. 118. 144. 155. & 183.

14.H 4.34. 39.H.6.40. If process goeth out Coronatoribus, and there be four Coroners, by some opinions any two of them may serve and execute, or returne the process; for the plural number Coronatoribus is observed: but one of them alone cannot execute or returne such process: Br. Ret. 42. See Co.4.46.

And yet by the book 31.ass.20. Br. Officer 22. the return must be by all four: and according to the opinion of that book, Mr. Stamf.fol.53. saith, that although in one County there shall be many Coroners, yet it is not needfull to have above one in the enquiry super visum corporis; And also that in giving judgment upon an utlary, it sufficeth if it be given by one; Also that in Redisseisin it sufficeth to have two Coroners: But where process is to be awarded to them, there all the Coroners within the same County ought to serve the same, or otherwise it is not good, for that they do this as a Minister, and not as Judge as they do in the other cases; And so also was the opinion of Hauk. 14.H. 4. Br.Ret.42. See Fitz.Ret.15.18. And yet if three of the Coroners die, the fourth may execute and retorne the process untill moe Coroners be chosen. Co.L.181.b.

Br.Ret 42. 14.H.4. Where process goeth out to the Sheriffs of London or York (there being two Sheriffs) and one of them returne the Writ alone, it is not good, although the other be dead; for then there are no Sheriffs; and when the Law giveth authority unto two persons, one alone can not execute it. Co.4.46.

And yet it is used that one of them doth serve the writ, and that is the serving of them both; but when it is returned, that must be in the names of both of them: 31.ass.20. Br.officer 22.

Upon a suit against the Citizens of York, the venire fac. was awarded to the Sheriff of the County, for that the officers of the City were Citizens. Dyer.279.

Br Process 155 For favour in the Undersheriff (as where he is of kindred, &c. to either party) that being alledged, the process shall be directed to the high Sheriff, with this Clause (as it seemeth) that the Undersheriff shall not meddle: And so where the Undersheriff is a party. 18.Ed. 4.fol.3.

Br.Process 58.71. But if both the Sheriff and Coroners shall be found partial or faulty, *Al Essiers.* then the process shall be directed unto certain other persons to be chosen or named by the Court, which persons upon a venire facias to them directed, shall make and return the pannel, and after the return thereof, they shall serve and execute all other the process which shall follow thereupon, as the Sheriff himself should have done if the process had bin directed to him: See 15.E.4.f.24. Bro. Chal.69. & 4.H.7.3. 14.H.7.31. 8.H.6.12. & Finch.f.60. Co.L.158.

Queſa. Triers, & quot, & q. poſt. alter. vide Co. L. 158.

Sir John Forteſcue (ſometimes Lord chief Juſtice, and after Lord Chancellor to King Henry the ſixth) writing hereof ſaith, If the Sheriff ſhall return a favourable pannel, exception may be taken thereto by either party, &c. which exception if it be found true by the oath of two of the ſame pannel (choſen thereto by the Juſtices) then the pannel ſhall be quaſhed; and then the Juſtices ſhall write to the Coroners of the ſame County, that they make a new pannel; and if that be found faulty, that ſhall be alſo quaſhed; and then the Juſtices ſhall chooſe two Clerks of the ſame Court, or two other perſons of the ſame County, who in the preſence of the Court, upon their oaths, ſhall make an indifferent pannel, which pannel ſhall not be challenged by either party: And yet exception may be taken by either party, to the poll or perſon of any of ſuch pannel, as to ſay that he is couſin, &c. to the other party, which being found, ſuch perſon ſhall not be ſworn. Vide Co. 9. 33. a. Co. L. 158.

Alſo in a place exempt out of every County (as the Pallace of Weſtminſter is) there the writ ſhall be directed to the Gardian or keeper of the Pallace, for he is there the immediate officer to the Court, and in nature and ſtead of the Sheriff. Finch. 52.

Al Eveſques.

Sometimes alſo proceſs ſhall be directed to the Biſhop, &c. as where the defendant is named or returned to be a Clerk, Non habens laicum fœdum, there a venire facias Clericum ſhall go to the Biſhop; and by vertue of this writ, the Biſhop ſhall ſequeſter the benefice of ſuch Clerk, to compell him to appear and anſwer, and muſt alſo warn his perſon to keep his day, &c. and if the defendant cometh not in at this day, a diſtringas Epiſcopum ſhall go out to the Sheriff, to cauſe the Biſhop to make his Clerk to come in: and thereupon may the Biſhop ſequeſter all the benefices of the defendant, and ſhall anſwer to the King for the iſſues thereof, &c. Br. Proceſs 14. 62. 64. & 127.

But if the Biſhop be a party to the ſuit, there the Proceſs ſhall be directed to the Metropolitan: See 34. H. 6. fol. 29. Br. Ret. 118. & Dyer 153. And ſede vacante of the Metropolitan, the proceſs ſhall be directed Gardiano Spiritualit. Archiepiſc. Dyer 77.

Nota q. ſur iſſue al Comon ley de matter in fait, q. eſt choſe Spiritual, (come Baſtardy, excommengement ou tiel) le Triall ſa. per certificat del ordinary, & per ceo ſon certificat fiſt fine del matter, & n'eſt traverſable. 7. E. 4. 14. Co. 7. 14. & 9. 31. Finch. 141.

C. per matters ſpiritual, L'ordinary eſt le offic. al Court. Et certificats de excommengement, & tous ſpiritual matters doit ee. fait per L'ordinary, & ney per le Commiſſary, Archdeacon, ou aſcun auter, comt. q. il ad un immediate juriſdiction, ſi non q. il ſoit ſpecialment admit un officer a le Court. 8. H. 6. 3. 7. c. 4. 14. f. 238.

Baſtardy being pleaded in an Aſſiſe, a Writ went out to the Biſhop to certifie, &c. who certified the party to be *Mulier*, reciting the Writ word by word, but did not ſend the Writ with the Certificate, and for default of ſending the Writ, the Certificate was adjudged void: 41. aſſ. 19. Br. 81.

Excommunication

Excommunication being pleaded in diſabling of the plaintiff, it ought to be certified by the Biſhop (who alſo is the immediate officer to the Court) and ſuch certificate ought to comprehend ſpecially the cauſe of the excommunication, &c. that the Judges may judge thereof, &c. But this may be pleaded (being ſhewed under the Biſhops ſeal) without any Writ to the Biſhop to certifie the ſame: Co.8.68. & Lit.201.

Alſo upon a recovery in a Q. Impedit, the Writ goeth out ſometimes to the Biſhop of the Dioceſs, and ſometimes to the Dean and Chapter (as gardians of the ſpiritualties, ſede vacante Epiſcopatus) to admit, or remove the Clerk, &c. Vide Dyer 241.260. & 350.

Et nota q. quant al choſes ſpiritual, L'ordinary eſt le immediate officer al tots Courts le Roy, ſc. per ſerver le proces; le ql. ſerra per L'ordinary in, & ney per ſon Commiſſary, Archdeacon, ou aſcun auter (comt. q. il ad immediate juriſdiction) ſil ne fuit ſpecialment admit un officer al Court. 7.E.4.14.12. E.4.15. 8.H.6.3. & Finch.141.

Auxi per al matters q. concerne Revenue del Roy, Leſcheator de chu. County eſt Lofficer al Chancery & Eſchequer, a q. tots le proces per tiel matters ſa. direct. Finch.78. Co.4.57.

Alſo in ſome caſes the Conſtable or Lieutenant of the Tower ſhall receive and execute the Kings Writs; as where the Major and Sheriffs of London be faulty, &c. See the Statute of 28.E.3.c.10. & 1.H.4.c.15. *Al Lieutenent del Tower.*

Sometimes Writs ſhall be directed to the Juſtices, &c. as Writs of Error to the Juſtices, &c. before whom the Judgement was given; And Writs of audita querela, to the Juſtices before whom the Plaintiff is to have remedy: And Writs to the Juſtices to paſs a fine of land to be Amortiſed. Dyer 188. *Al Juſtices.*

Thel.107. Sometimes Writs ſhall be directed to the Lords of whom the lands are holden: Plo. 74. Sometimes to Stewards, Majors, Bailiffs, or other officers of Mannors, Cities, Boroughs, or Towns, within which the lands do lye. *Al Signiors.*

As every Writ which concerneth any freehold tenant in London, ought to be directed to the Major and Sheriffs of London: But all other Writs which are at the Common Law within the ſame City, ought to be directed to the Sheriffs only. Old N. bre.4.5.

And ſometimes Writs ſhall be directed to the parties themſelves of whom complaint is made, as the Writs of Monſtraverunt, de ne injuſtè vexes, de Eſtrepamento ſometimes, and ſometimes Writs of Prohibition, &c. Vide plus Dyer 241.pl.48. & 266.pl.8. *Al parties.*

2.E.3.c.5. Cromp.203. Sheriffs and Underſheriffs ſhall receive all manner of Writs in any place, and at all times within their County, when and wherſoever they ſhall be delivered them, without taking of any thing other than ſuch fees as the Law alloweth, and ſhall make thereof Warrant. *Delivery of Writs.*

And when a Writ is delivered to the Sheriff to execute, he ought to receive

receive it, and not to deliver it to the Sheriff (or party that delivered it to him) back again, but muſt execute it, and then Retorne the ſame into the Court from whence it came; for he is ſo commanded by the Writ; And if he doth not ſo, upon complaint thereof, the Court will ſet a fine upon his head, per Anderſon. ter. Paſch. 36. Eliz.

An Exigent which was delivered of Record (to the Sheriff) was imbeaſeled, and the coppy thereof was retorned by the Sheriff; And he was amerced for the retorne of the coppy, at 30. l. and for the imbeaſeling thereof, at 20. l. 5. H. 4. fol. 5.

If any man doth fear the malice, indirect dealing, or negligence of the Sheriff, &c. in the execution of any Writ, they may deliver their Writs in the open County Court, or in any other place in the County, and may take of the Sheriff or Underſheriff being preſent a bill, wherein the names of the Demandants and Tenants mentioned in the Writ ſhall be contained, whereto upon requeſt made by him which delivered the Writ, the Sheriff or Underſheriff ſhall put to their ſeal for a teſtimony, without taking any thing therefore, and mention ſhall be made therein of the day of the deliverance of the Writ: and if the Sheriff or Underſheriff ſhall refuſe to put his ſeal to ſuch bill, others that be preſent ſhall ſet to their ſeals to ſuch bill for witneſs thereof. W. 2. c. 39. & 2. Ed. 3. c. 5. 1 P. Rec. 1.

Nient Returne. And if the Sheriff or Underſheriff make not a due return of the ſaid Writs delivered or offered unto him, upon complaint thereof to the Juſtices of the one Bench, or of the other, they are to make a judicial Writ to the Judges of Aſſiſe, to enquire thereof, by virtue whereof the Juſtices of Aſſiſe ſhall have power to enquire thereof, by thoſe that were preſent when the Writ was delivered, &c. And if the Sheriff be found in fault, then upon Retorne thereof into the Bench, &c. he ſhall be puniſhed, and ſhall yield damages to the party grieved (having reſpect to the quantity and quality of the action, and to the perill which might have chanced unto him by the delay which he ſuffered:) See the book of Aſſiſes, Lib. 29. pl. 58. Br. return de breve 72. & Officer 40. Abr. d'aſſ. 137. 13. E. 1. 39.

Yea the Juſtices of Aſſiſe have power to enquire thereof at every mans complaint, and to award damages, ut ſupra. 2. E. 3. c. 5.

Tarde. Alſo by this means remedy may be had when the Sheriff ſhall not execute the Writ; or ſhall return untruly that the Writ came too late, whereby he could not execute the Kings commandement, when as he had ſufficient time to ſerve the Writ: 13. Ed. 1. cap. 39. Abr. d'aſſ. 137.

Falſe Returne. And the like remedy is given when the Sheriff, &c. ſhall make any other falſe return of any Writ (whereby right is deferred) and the offendors making any ſuch falſe return, ſhall yield damages to the party grieved, ut ſupra, 28. E. 1. c. 16.

And ſo if the Sheriff ſhall retorne Mandavi ballivo libertatis, where there is no liberty. Kitch. Retor. 44.

Alſo the like remedy is given, when the Sheriff ſhall Retorne too ſmall

ſmall iſſues, &c. Abr.d'aſſ.115.& 137. & 19.H.6.fol.8. Sée hic poſtea Retorne of iſſues.

CAP. 21.

Que execu-ter.

ALL Writs and Proceſs directed to the Sheriff, are uſually delivered to the Underſheriff and executed by him.

Lamb.91. And yet the high Sheriff may execute them himſelf; Or the high Sheriff may command his Underſheriff, Bayliff, or other ſworn or known officer to ſerve or execute them, and ſuch commandement of the Sheriff by word only is good, without any precept in writing. Kielw. 86. 9.E.4.48. 21.H.7.23.

21.H.7.23.a. But if the Sheriff will command another man (that is no ſworn or known officer) to ſerve or execute any Writ, Proceſs, or other Warrant, the Sheriff muſt deliver him the Writ it ſelf, or elſe a precept in writing; otherwiſe an action of falſe impriſonment will lie for the arreſt, Lambert 91. 21.H.7.23.

Keil.86. And yet the Sheriff may command his ſervant by word only (without any Precept in writing) to ſerve or execute any Proceſs, and it is good: and ſo any ſtranger by the commandement of the Sheriff, and as a ſervant to the Sheriff, may juſtifie to ſerve and execute any Proceſs upon the body or goods of another, or to ſeiſe the goods of any perſon that is outlawed, &c. and that without any Precept or Warrant in writing: Sée Br.faux impr.43.& treſpaſſ.339.

How to be executed.

If the Writ or other Proceſs cometh to the Underſheriffs hands, he muſt either execute it himſelf, or elſe muſt make his Warrant in writing to the Bayliffs, and other ſuch Officers, and that in the high Sheriffs name: or he may make ſuch Warrant to any ſtranger.

The Bayliff or other officer to whom any Warrant ſhall be directed and delivered, ought with all ſpeed and ſecrecy, to execute the ſame.

If the high Sheriff (or Underſheriff in the high Sheriffs name) upon any Writ or Proceſs to them directed and delivered, ſhall direct their Warrant to their Bayliffs, or any other ſuch officer (to arreſt one, or otherwiſe to execute ſuch Writ or Proceſs) ſuch Bayliff or other officer muſt ſerve or execute it himſelf: for theſe can command none other to do it neither by word nor writing.

Lamb.91.

And ſo it ſæmeth if the high Sheriff ſhall direct his Warrant to his Underſheriff, the Underſheriff muſt execute it himſelf, and can command none other to do it.

Note that none ſhall be arreſted for debt, Detinue, treſpaſs, or other cauſe of action, but only by virtue of ſome Proceſs, precept or commandement out of ſome Court.

Vnc. per le cuſtome de London, ſur Pleint, ou Suite per debt la enter devant

devant les viſcounts envers aut. Les Serjants pot. arreſt le Debtor per le commandement dl viſc. (per parol tantum, ſa. aſcun Proceſs ou Precept in Eſcript) de appeare & reſpond. al meſme ſuite; & ceo il font per Preſcription. Vide lib. Intrac. tit. Treſpaſs in Proceſs. div. 4. vide hic c. 22.

Poſſe comitatus. Note that the Sheriff, Undersheriff, Bayliff, or other ſuch officer may (if need be) take poſſe comitatus, ſc. what number of other perſons they ſhall think good to execute any Writ, Proceſs, or other lawfull Warrant to them directed; and ſuch as ſhall not aſſiſt them therein being required, ſhall make fine to the King. See hic poſtea cap. 95.

A warrant directed (by the high Sheriff, or Undersheriff) to the Bayliff or other ſworn officer, and to a ſtranger (or ſpecial Bayliff, who is no ſworn or known officer) and the warrant is made to them, conjunctim & diviſim, and is executed by the ſtranger only, this is good.

A warrant is directed to two men joyntly to arreſt another, yet either of them alone may do it: Lamb. 91. Co. L. 181. vide.

The formes of warrants to be made upon mean Proceſs: See hic poſtea cap. 23.

Not to diſpute the Authority. The Sheriff nor his Officers are not to diſpute the authority of the Court, from or out of which they ſhall receive any writ, Proceſs, or other warrant: but they at their perill are truly to execute all writs, warrants, Proceſs, and Precepts of the Judges, Juſtices, or Court to them directed, and that according as the ſame writs, &c. ſhall command, in every behalf; and to this alſo they are ſworn: And therefore whereas there was an information preferred in the Star-chamber (termino Michaelis Anno 3. Jacobi Regis) by the Atturney general, againſt divers Serjeants of the Mace, and others, for arreſting the body of Iſabella Countels of Rutland, by force of a Capias ad ſatisfaciendum, upon a Judgement in debt given in the Court of Common Pleas againſt the ſaid Countels; it was reſolved for good Law (by Egerton Lord Chancellor, Popham and Gawdie chief Juſtices, Fleming chief Baron, and by all the Court of Star-chamber) that the Sheriff, or his officers by his warrant, without any offence (of Law) might execute the ſaid writ upon the body of the ſaid Countels: And although it appeared in the Capias that ſhe was a Countels (againſt whom by Law no Capias in ſuch caſe lyeth, Et quod ignorantia Juris non excuſat:) yet for as much as in ſome caſes, (as in caſes of contempt, &c.) a Capias doth lie againſt a Countels (or againſt any Peer of the Realm, &c.) for that cauſe it was there reſolved, that the Sheriff and his Officers or Miniſters ought not to examine the judicial act of the Court, but ought to execute the writ. Co. 6. 54. 9. 68. & 10. 70. D. & St. 59.

And with this agreeth the opinion in 36. H. 8. Dyer. f. 60. that if a Capias (in an action of debt) or an Exigent, or a Writ of execution, ſhall come to the Sheriff againſt a Duke or Earle, &c. whereas it lyeth not againſt ſuch perſons, yet the Sheriff ought to ſerve and execute ſuch Writ or Proceſs, and not to argue and diſpute the validity thereof: See Co. 9. 68. & 10. 70. & 76. b. accordant.

Capias

Capias ne giſt vers Peer del Realm (in action de treſpaſs, ou de br, &c.) Mes vers un Chivaler giſt: C. home pt. eſtre Chival. que nad franktenement, mes ney un County, ou Baron, pro common intendement. Mes ſi Peer del Realm (ſc. County, ou Baron) v'ad aſcun choſe in le County ou il eſt ſue, le party plt. avera un Elegit ſur teſtatum in aſcun County lon il ad Aſſets: Anxi ſur contempt, come Reſcous, ou tiel, Capias giſt vers Peer de Realm, & ceo eſt per le diſturbance del ley. 1. H. 5. 14. 26. H. 8. 7. 27. H. 8. 12. Finch. 103.

Anxi cemt. q. le corps d'un Peer ne ſa. priſe ſur Capias in Proces, per ceo q. le ley intend q. ad Aſſets, &c. vnc. ſemble q. ſon Corps pt. bien eſtre priſe in exemtion ſ. un Statute, ſil n'ad biez. ne terr. extendable; C. les pol. del Statute merchant fait. 13. E. 1. aps. q. ad done bre. per les terrs, & biez. del debtor, ad anxi c. pol. & al darein il avera bre. a ql. viſcount il voile, de prend. ſon corps ſi il ſoit lay, & de retain. ceo, &c. per q. paroles nul Noble home eſt exempt, ces il. ſont lay homes; & iſſt. les Juſtices ſemble de agreer in le caſe del ſig. Mountjoy,* in Communi Banco. Anno 29. Eliz.

Upon an Original Proceſs for debt, treſpaſs, or the like, no knight, nor Burgeſs of the Parliament, nor any of their neceſſary ſervants attending upon their Maſters, during the Parliament, ought to be arreſted: Neither ſhall any of their goods or chattels neceſſary, be attached or taken by any Sheriff or other officer (except it be in caſe of treaſon, or felony) Cromp. author. des Courts fol. 11.

A Knight, or Burgeſs of the Parliament, nor any of their neceſſary ſervants or attendants ſhall be arreſted upon a Writ of execution or the like; And if any ſuch priviledged perſon ſhall happen to be taken upon an execution, during the Seſſion of the Parliament, they ſhall have the priviledge of the Parliament; and the Sheriff may, nay ought to deliver ſuch priſoner, being ſent for by the Houſe: But yet upon a Capias utlagatum, they may be arreſted, during the Seſſion of the Parliament. See plus hic cap. 22. & 126. & 29.

Clergy men called to the convocation, &c. and their ſervants, ſhall have the priviledges, eundo, morando, & redeundo, which the Peers and Commons of the Realm in Parliament have, Stat. 8. H. 6. cap. 1. Finch. 140.

But if any Writ or Proceſs ſhall be delivered to the Sheriff, againſt any of theſe perſons thus priviledged, or againſt their goods, and the Sheriff or his officers ſhall execute the ſame, and after ſhall readily deliver the party again, or his goods (ſo taken) when he ſhall receive any Writ of Priviledge, or other command from the Houſe of Parliament ſo to do, quære if this ſhall not excuſe the officer; or that the execution of ſuch Proceſs upon ſuch priviledged perſons be altogether unlawfull; it ſeemeth no excuſe. See hic cap. 126.

Dyer. 60. And yet a Burgeſs of the Parliament was taken, arreſted, and impriſoned by the Sheriff upon a Writ of Exigent, which iſſued upon a Capias ad ſatisfaciendum, and after a Writ of priviledge was granted from the Parliament; whereupon the Sheriff let the priſoner go at large; and it was holden that the priviledge was grantable, notwithſtanding the execution; for that the King and the Realm have intereſt in the body of every Burgeſs (and other member of the Parliament)

and the Common-wealth ſhall be preferred, and the party may be afterwards taken in execution again: but admitting that a Writ of privilege had not been grantable in this caſe, yet it was holden that the Sheriff ſhould not be charged for ſuch his letting of the priſoner go, he being commanded thereto by authority of Law, and not done of his own head only; and beſides he is bound to execute all procels of Law, as well by his Oath, as by his Office: and the Sheriff is not bound to take * notice of the Law; for the Law intends him to be a lay perſon, and not to have knowledge of the Law: ſo that whereas a Writ ſhall come to him by authority, or without authority, he may not argue or diſpute it: and therefore if a Capias ſhall come to the Sheriff without any original, and he ſhall ſerve it, he is excuſable in an action of falſe impriſonment; for the Sheriff being the officer and Miniſter of the Court, it ſhall be againſt reaſon to puniſh him for executing the procels and commandement of the Court; and the rule is, Quicunque juſſu Judicis aliquid fecerit, non videtur dolo malo feciſſe, quia parere neceſſe eſt: Co. 10.70.

Vide 1. J. c. 13. P. Execution. 4.

* Yet in ſome caſes the Law is otherwiſe: ſee *fol. ſequens.*

If the Court or Juſtices ſhall award a Procels to the Sheriff, to arreſt or take another without cauſe, and the Sheriff (or his officers) ſhall thereupon arreſt him, the Sheriff nor his officers are not puniſhable for this; yea although the Juſtices ſhall after amend their Procels; yet the Sheriff, &c. ſhall be diſcharged. 20. H. 6. 5.

And yet this difference is to be taken: ſc. when a Court hath juriſdiction of the cauſe, and ſhall proceed inverſo ordine, or erroneouſly, there the Officer or Miniſter of the Court, which ſhall execute the Precept or Procels of the Court, is excuſable, ſo as no action will lye againſt him: But when the Court hath no juriſdiction of the cauſe, there all the proceeding is coram non Judice, and therefore there an action will lye againſt the Officer, without any regard had of the Precept or Procels of the Court: And as to the former rule, Quicunque juſſu Judicis aliquid fecerit, non videtur dolo malo feciſſe, quia parere neceſſe eſt, the Law well alloweth thereof; But when he hath not juriſdiction of the cauſe, non eſt Judex, and it is not of neceſſity to obey him who is not Judge of the cauſe, no more than it is to obey a meer ſtranger; for another rule is, Judicium à non ſuo Judice datum, nullius eſt momenti; And accordingly in 22. Edw. 4. fol. 33. Pigott ſaith, That if the Court hath not power and authority (in the cauſe) then their proceeding is coram non Judice. Co. 10.76.

Come ſi les Juſtices del Court del Comon Pleas, ſur preier d'aſcun parſon, hors de lo. Court, fera aſcun Proceſs de arreſt un auter per ſuerty de le peace; ou deins lo. Court fera aſcun tel proces de arreſt le party deins le County, lon le Court de Comon Pleas eſt, ou de arreſt un per trove ſuerty del peace, q. neſt preſent in Court, ne deins lo view, ſemble q. l'officer n'eſt de ſerver ou execut. tel proces, per ceo. q. lo. authority in tiel caſes, eſt tantum deins le precinct de lo. Court.

Iſſint ſi les Juſtices de Comon Pleas voile tener plea de Appell. &c. Vide Kielw. 106.

Iſſint ſi les Juſtices de Comon Pleas, ou d'aſcun auter Court, grant. aſcun Precept, &c. *concernant aſcun auter choſes, de q. il. ou lo. Court, n'ont Juriſdiction.*

Iſſint

Iſſint q. un action eſt commence deut un Judge, ſil ſoit Judge de aſcun parcel de ceo que eſt ſne devant luy, le judgment n'eſt my void, per ceo que de parcel il avoit power de tener plea: Mes lou le Judge tient plea de tiel matter, que de nul part il avoit power, & done Judgment ſur ceo, eſt come un void Judgment in ley; & donque cheſcun choſe que eſt fait per cauſe de cel, eſt un treſpaſs ou diſſein. come le caſe eſt. Keil. 106.

Alſo by the book 22. aſſ. pl. 64. it is holden, that where an erroneous Judgement is given in any Court, the officer which maketh execution is excuſed: but contrariwiſe, where the Court giveth Judgement of land, contract, or the like, which lyeth out of their juriſdiction, as where an action is brought in a Court, of land, which lyeth out of their juriſdiction, or of a contract which was made out of their juriſdiction, and the demandant or plaintiff recovereth and hath execution, there an Aſſiſe or an action of Treſpaſs will lye againſt the officer, &c. which maketh the execution; for all the proceeding is coram non judice. vide tit. matter Keil. 106.

Alſo by the book 14. H. 8. 16. if a Juſtice of Peace ſhall make a warrant to arreſt one for felony who is not indited, the Juſtice doth erre in the granting of ſuch a warrant; and yet if the Bayliff, Conſtable, or other Officer ſhall ſerve ſuch a warrant, this is a good juſtification of the Officer in an action of falſe impriſonment (notwithſtanding the Juſtice did erre in making the warrant) for the Juſtice of Peace is a Judge of the cauſe.

Mes ſi Juſtices de peace arreigne home de Treaſon (a le Seſſions) que eſt trove culpable, & ſur ceo pendus, ceo eſt felony, cy bien in les Juſtices, come in le vicount, (ou anter Officer) que luy ſuſpend. C. les Juſtices de peace n'ont Authority in ceo; mes fuit coram non Judice: Mes ſi les Juſtices de peace arreign home de felony, ſes un Judictment de treſpas, ſur q. l'offender eſt pendus, ceo eſt felony in les Juſtices, mes ney in le vic. ou Officer, que luy pend, per ceo q. les Juſtices de peace ont authority & Juriſdiction in ceo darein caſe.

14. H. 8. 16. The ſame Law is where the Sheriff doth erre in his warrant directed by him to the Bayliff of a franchiſe, or to his own Bayliff. Br. Faux Impriſ. 8.

24. E. 3. 9. So upon a Commiſſion from the King granted out for the arreſting of any perſon, though it ſhould be againſt the law, yet the Commiſſioners, or thoſe to whom the Commiſſioners ſhall direct their Precept or warrant (for arreſting of any ſuch perſon) may execute and juſtifie the ſame. Br. Faux Impriſ. 9.

But upon an action of falſe impriſonment, where the defendant juſtifieth, as Sheriff of C. and that he arreſted the plaintiff by force of a Capias, &c. this is a good plea, ſo as he pleadeth that this was the ſame impriſonment. Br. Faux Impriſ. 29.

And ſo note that in ſome caſes the Sheriff, or other officer, is bound at his peril to take knowledge of the law; as in the caſes aforeſaid, where the Court, Judge, or Juſtice, having no juriſdiction of the cauſe, ſhall grant out any Proceſs, writ or warrant, &c. and the officer ſhall execute the ſame, &c. for in ſuch caſes, Ignorantia juris non excuſat miniſtros Legis. *The officer to take knowledge of the Law.*

Un fuit attaint de disſein, voe force, per que Exigent iſſit, q̄l. brt. le vic. retorne, & que le Roy luy maund per briefe ſouth ſon targe (ou Privy Seal) que il avoit luy pardon le treſpaſs & impriſonment, & command que ne ſoit endamage per ceo cauſe, & iſſint ad rien fait prò reaſon de ceo commandement le Roy; & retorne auxi le briefe le Roy; & per ceo q̄.cel brt. doit aver eſtre maunde al Juſtices, & il doient aver command̄ le viconnt que il ſurceſſera, Idcò le vic. fuit amerce, & novel Exigent agard. C. le vic. ne pt. pro nul brt. (per le ley) ſurceſſera, frq. pro garrant d'Court, ou Liew, hors de quel il avoit le Commandement. quod nota 14. E. 3. Fitz. Retor. de vic. 89. & 4. E. 4. f. 17. Plus hic c. 29. & 59.

Alſo if a Writ de homine replegiando cometh to the Sheriff (which Writ commandeth the Sheriff to make deliverance of the body, except the priſoner be in, per ſpeciale præceptum noſtrum, vel capital. Juſtic' noſtri, vel pro morte hominis, vel pro foreſta, vel pro aliquo alio recto, quare non ſit replegiabilis:) yet the Sheriff ſhall be amerced if upon that Writ he delivers a priſoner which is in for Rediſſeiſin, without ſpecial commandement. See Statute Marl. c. 8. Fitz. Natura Brevium 189. c. Dyer 60. 61. Fitz. 66. L.

And ſo of a priſoner (or an Accomptant) found and condemned in arrerages before auditors, and committed by them to priſon, if the Sheriff or Gaoler ſhall deliver him upon a Writ de homine repleg. or otherwiſe, without the aſſent of his Maſter, it is an Eſcape, and the Sheriff, &c. ſhall pay the debt, &c. whereas at the Common Law before this Statute of Weſtm. 2. the Maſter had no remedy, but his action *ſur le caſe*. Weſt. 2. c. 11.

The words of this Statute of Weſtm. 2. to this purpoſe, are thus, Sit hujuſmodi incarceratus irreplegiabilis (ſc. *ſa. licence ou aſſent le Sig.*) Et caveat ſibi Vicecomes, vel cuſtos ejuſdem Gaole, (ſive ſit infra libertatem, ſive extra) quod per Commune bre. quod dicitur Replegiare, vel alio modo, ſine aſſenſu domini, ipſum à priſona exire non permittat, Quod ſi fecerit, & ſuper hoc convincatur, reſpondeat domino de dampnis per hujuſmodi ſervientem ſibi illatis, ſecundum quod per patriam verificare poterit, & habeat dominus ſuum recuperare per breve de Debito verſus cuſtodem. Et ſi Cuſtos gaole, non habet per quod Juſticietur, vel unde ſolvat, reſpondeat ſuperior ſuus, qui cuſtodiam hujuſmodi gaole ſibi commiſit, per idem breve: *Et nota que il. ſerra charge de tant q̄ge l'accomptant fuit trove in arrerages deus les Auditors.*

Et vnc. ſur bre. de ex parte talis, retornable in l'eſchequer, le vic. poet deliver tiel priſoner, ou poet bayle luy, accordt come le bre. ſerra, vide Dyer 61. & Fitz. 129. g. i. & 130. a. *Mes nota q. le Suerty in ley ex parte talis ſerra al profit le Roy (ces les mainpernors ſa oblige ſur un payne, q. il. facent luy garder ſon jour, &c.) mes le Sig. ſemble icy ſans remedy, cy bien vers le vic. ou gaoler, come vers le bayly: C. le vic. ou gaoler eſt diſcharge per ceo bre le Roy; & le baylye luy diſcharg. adire q. il anter foits accompt deus Auditors aſſignees, &c. & mre. tot. le matter, & q. il fuit comit. al priſon, & ceo matter mre. diſcharge le bayly; tamen quere inde.*

Auxi nota q. le ſuerty que ſa. priſe ſur bre. de ex parte talis, poet eſtree priſe in le Chancery, ou in le Eſchequer; Et in aſcun caſe ſerra priſe in le pais, per ou deut le viconnt. Fitz. 129. 130. & old Nat. bre. 60.

Mes

Mes nient obſtant q. ceo Stat. de Weſtm. 2. *veot que le Accomptant ne ſerra miſe al bayle per breve de Homine Repleg. vel alio modo, vuc. ſee. que ceux parol. ſerra priſe ſtrict. C. ſil ad priviledge dl Parliament, ou ſoit d'eſtre execute per treaſon, on felony, ou frq. d'eſtre areigne de ceo, il ſa. deliver, & l e vic. & gaoler ſerra diſcharge.*

Mes ſemble que il neſt plee per le vic. ou gaoler, q. il leſſa le baylye de aler per aſſent dl Sig. ſil ne mre. fait le Sig. provant cel aſſent.

Auxi ſi le Accomptant ſoit ſne, & ſoit utlage, & apres il eſt priſe & miſe en priſon en le gayle, donq; il eſt repleviſable, old Nat.bre. 58.

As for the Kings Protection granted to any of his Subjects by his Writ, whereby any immunity or freedom from actions, ſuits, or arreſts ſhall be given to any of them, it is to be noted, That the Courts of Juſtice where any ſuch Protection is caſt, are to allow or diſallow of the ſame, (be they Courts of Record, or not of Record;) But the Sheriff nor any other Officer or Miniſter are to allow or diſallow the ſame. Co.L. 131.a. *Protection.*

Alſo note that by the death of the King (or by his Reſig.) the authority of the Sheriff, and of all his Officers, doth determin and ceaſe, vide hic c.2.

But yet by the Statute 1. Ed. 6. c. 7. it is provided that by the death of the King, that no action, ſuit, bill, or playnt, depending betwæn party and party, in any Court of Record, ſhall not in any wiſe be diſcontinued, &c. So that now, if any Judicial Writ or Protes in any Court of Record be awarded in the time of the precedent King, this now may be executed by the Sheriff, or his Officers, in the time of the ſuccæding Prince, &c. vide Co.7.30.31.

CAP. 22.

The Officers duty.

The Sheriff or other Officer to whom any Writ or Warrant ſhall be directed and delivered, ought with all ſpæd and ſecrecy, to execute his ſaid writ or warrant according as the ſame commandeth: and beſides he is bound to purſue the effect of his warrant in every behalf, or otherwiſe his warrant will not excuſe him. 21.H.7.23.a.

In an action of debt, treſpaſs, or the like, where the Sheriff is to ſummon, attach, or garniſh the deff. the Sheriff is to ſummon, attach, or garniſh the deff. preſently; and therefore if in ſuch caſes the Sheriff ſhall retorne Nihil habet, without ſaying Nec habuit die receptionis brevis, or nec habuit poſt receptionem brevis; yet it ſhall be intended that the Sheriff endeavoured the execution thereof preſently, ſc. the day of, or preſently upon the receipt of the writ. See hic c.56. & 77.

Note

Note that Writs concerning Common Pleas, are some real, and some personal; and they both again, are either Precipes, or else Si fecerit te securum.

Precipes are of two sorts, &c.

1. Precipe quod reddat, which lyeth for things in render, as of land, rent, &c. or money, goods detained, and the like.

2. Precipe quod faciat, or quod permittat, as the Writ de Consuetud. & servitiis, Sect. ad molendinum, &c.

And upon these Precipes, the Sheriff is to command the defendant to do somewhat in certain which the plaintiff sueth for, which if he do not, then the Sheriff is to serve the Process.

But upon a Si fecerit te securum, the Sheriff is to serve the Process without more ado. Finch. 257.

If the defendant doth the thing commanded by the Precipe, yet the Sheriff is to serve the Process, and to make return thereof as it seemeth. See hic c. 56, 70.

Shew the warrant.

A sworn and known officer (be he Sheriff, Undersheriff, Bayliff, or Serjeant) needs not to shew his Warrant or Writ, when he cometh to serve it upon any mans person, or goods, although the party demandeth it: but a special Bayliff, or other person who is no sworn and known officer, must shew their Warrant to the party, if he demands it, or otherwise the party may make resistance, and needs not to obey it. Co. 9. 69. 21. H. 7. 23 & 37.

And so of the Sheriffs servant, or Undersheriffs servant, being no sworn Bayliff, they cannot arrest a man without shewing their Warrant, if it be demanded.

And yet no special Bayliff is bound to shew his Warrant without demand thereof. 8. E. 4. 14. 14. H. 7. 9. Co. 9. 69.

But every Bayliff and other person that will justifie the imprisonment of the body of any other, by force of any Warrant, must shew the same Warrant in Court, &c. And therefore it behoveth all Bayliffs and other such officers to keep safely by them all such their warrants. Co. 10. 92.

Or declare the contents.

A sworn and known officer, if he will not shew his warrant to the party (as he needs not) yet upon the arrest the officer ought to declare the contents of his warrant, (*sc.* at whose suit he maketh the arrest, for what cause, out of what Court, and into what Court, and when it is returnable) to the end, that if it be upon an execution, the party may pay the money, and so free his body from imprisonment; and if it be upon mean process, that the party may either agree with the other, or else that he may put in sureties and bail for his appearance according to law, and to know the day of his appearance. Co. 9. 68. 69. & 6. 54.

But this (*sc.* that the officer upon the arrest ought to declare the contents Co. 9. 69 a.

contents of his Warrant ut ſupra) muſt be underſtood, when the party arreſted, or to be arreſted, ſhall yield and ſubmit himſelf to the arreſt, and not when he maketh reſiſtance, or flyeth.

Co.9.69 b. Note where our Law books or Statutes do ſpeak of a known Bayliff or officer, they are not to be underſtood (neither is it needfull) that ſuch Bayliff or officer be known to the party, who is to be arreſted, but if he be ſo commonly known, it ſufficeth. *Bailiff cognu.*

Co.9.69. And an officer giveth ſufficient notice what he is, when he ſaith to the party, I arreſt you in the Kings name; and in ſuch caſe the party at his peril ought to obey him, though he knoweth him not to be an officer; and if he have no lawfull warrant, the party arreſted may have his action of falſe impriſonment againſt him.

If the Sheriff or officer cometh to arreſt a man, and he flyeth, the officer may purſue him, and take him again, though in another County; but may not beat, ſtrike or aſſault him, for that he was not arreſted; but if he were arreſted and then flyeth, and draweth any weapon, the officer may juſtifie to aſſault, batter, and take him again. 2.E.4.7.

14.H.8.16. If any officer do arreſt a man before that he hath any warrant, and then afterwards doth procure a warrant (or a warrant cometh after to him) to arreſt the party for the ſame cauſe, yet the firſt arreſt was wrongfull, and the party grieved may have his action of falſe impriſonment againſt the officer: Br.faux impriſonment.8. *Sans garrant.*

A man condemned in debt, at the requeſt of the factor of the plaintiff, was arreſted by the Sheriff for the debt, without any writ or warrant, and being in the Sheriffs cuſtody, the Sheriffs and the plaintiffs factor do procure a Capias ad ſatisfac. againſt the priſoner for the debt, and by vertue thereof the Sheriff arreſteth the priſoner again, and brings him into the Court at the day of the retorne, &c. and all this matter being diſcloſed to the Court, and found to be true, the defendant would have bin diſcharged, but yet he was committed to priſon in execution for the debt (for that the plaintiff was himſelf particeps criminis in this undue arreſt) And the Sheriff was amerced at 10. l. and the factor at 5.l. And beſides for the wrong to the defendant he may have his action of falſe impriſonment againſt both the Sheriff and factor of the plaintiff. Dyer 244. See other like caſes. Dyer 241.242. & 16. E.3.Fitz.Bar.248.

If a Serjeant in London ſhall attach a man before the ſuit or plaint be entred, an action lyeth againſt the Serjeant: And ſo is it if the Sheriff, or any other officer, ſhall arreſt any man before their warrant come to them; and it is not excuſable although that the warrant comes to them afterwards.

43.Eli.c.6. 1.Jac.25. If any Sheriff, Undersheriff, or other perſon having authority, or taking upon him to break up writs, do make any warrant for the ſummons of any perſon, as upon any writ, procels, or ſuit; or for the arreſting or attaching of any perſon, or perſons by his or their body or goods, to appear in any his Majeſties Courts at Weſtminſter, or elſewhere, not having before that the original writ or procels warranting *Sans original.*

the

the ſame, upon complaint thereof made to the Judges of Aſſiſe of the County where the offence ſhall be committed, or to the Judges of the Court out of which the Proceſs iſſued, as well the party that made ſuch Warrant, as alſo thoſe that were the procurers thereof, ſhall be ſent for by the ſame Judges, and be thereof before them examined upon oath; and if the ſame offence ſhall be confeſſed by the offenders, or proved by ſufficient witneſſes (to the ſatisfaction of the ſame Judges) the ſame Judges ſhall forthwith commit every of the ſame offenders to the gaol, there to remain without bail untill they have paid (amongſt them) ten pounds unto the party grieved, and ſuch coſts and damages as the ſame Judges ſhall ſet down, that the party hath ſuſtained thereby, and withall twenty pounds a piece to the King for their ſaid offence.

And yet where a Capias, &c. ſhall go out to the Sheriff without an original, and he doth execute and ſerve the ſame, an action of falſe impriſonment will not lie againſt the Sheriff; for it was not his fault, by Hank. 11. H. 4. 36. Neither is the Sheriff bound to take knowledge whether this be of Record or no: yea, the arreſt thus made by the Sheriff is good, ſo that if the party ſhall make a Reſcous, he ſhall be therefore puniſhed; for the Capias was a ſufficient Warrant to the Sheriff. M. 38. H. 8. 12. H. 7. 14. b. & 21. H. 7. 22. b. Br. faux impriſonment. 31.

Si le vic. eſcrye al Bayliff dl franchiſe in tiel forme, Ballivo libertatis, &c. ſalutem, Mandatum domini Regis recepi in hæc verba, & reherſe comt. le Roy command per bre. de prend. le corps d un tiel, lou nul bre. viet al vic. ceo eſt bon excuſe al Bayliff dl franchiſe, & le party avera ſon remedy vers le vicount.

Un Atturny avoit fait un Capias direct al vic. ou la fuit ul. original, per q. l'atturny fuit miſe al fleet, & apres ſon noſme fuit treet hors dl Rolls de Atturnyes, &c. vide 10. H. 6. 37.

Two men of one name.

Where there be two or three known by the name of I. S. and upon Proceſs granted out againſt one of them, the officer arreſteth another of them (where it is not the defendant) or attacheth the goods which are not the defendants goods, the officer ſhall be a treſpaſſer; quære tamen & vide hic c. 61. and if the plaintiff had ſhewed the officer the wrong man, or goods, and had told him that that had been the defendant, or thoſe had been the defendants goods which were not, there both the plaintiff and officer are treſpaſſers; but it is otherwiſe upon ſuch information, in making of the view of land, for that is neither ſeiſin, nor an arreſt. 11. H. 4 90. Br. Officer. 8.

And yet by the opinion of the book in long 5. E. 4. fol. 51. (Br. faux impriſ. 19. & Idempt. Nom. 6.) where there be two or three known by the name of I. S. Yeoman in D. and one of them is ſued, and a Capias is directed out to the Sheriff, &c. and the Sheriff taketh another of them, an action of falſe impriſonment will not lie; for that he that is ſo taken is named in the Capias, and therefore hath no remedy, but by a Writ of Idemptitate Nominis: But the contrary is holden in the ſame book, and year, fol. 84. ſc. that in the former caſe, an action of falſe impriſonment doth lie againſt the Sheriff, &c. for that the Sheriff (or officer) is to take notice at his perill, which of them it is that is ſued. And therefore it ſeemeth ſafeſt for the Sheriff in ſuch

caſes,

cases to make his Returne, that there be diders of that name and ſirname within his County, &c. and that therefore he knew not upon which of them to execute the Writ. Vide hic cap. 61. ſuch a Returne.

Where a warrant is granted out againſt I. N. the ſon of W. N. and the Officer thereupon arreſteth I. N. the ſon of T. N. although in truth he be the ſame perſon that offended, and againſt whom the complaint was made, yet this arreſt is tortious, and the officer ſubject to an action of falſe impriſonment. See the like matter 10. E. 4. f. 12. Br. Faux Impriſ. 38.

Cromp. 214. If the Sheriff, &c. arreſteth one upon a Capias, and after returne s Non eſt inventus, an action of falſe impriſonment lyeth, &c.

If an officer hath arreſted a man by vertue of a Capias, or upon a Latitat, and then giveth him a day to come to him again with ſureties to be bound for his appearance, &c. and ſo the officer letteth the party go, who comes not again at his day appointed here it ſeemeth that the officer cannot take his priſoner again by vertue of his former writ or warrant, for that the officer gave the priſoner leave, &c. As where a man is in execution for debt, and the Sheriff or Gaoler licenſeth him to go at large for a time, and then to return, or to go by bail or baſton, and he cometh again at the time, yet this is an eſcape; and ſo it is adjudged in Boytons caſe C. 3. fol. 44. and in Bridgeſ. caſe Co. 3. f. 52 But if the party arreſted (or the priſoner) had eſcaped of his own wrong, without the conſent of the officer, then upon freſh ſuit made, the officer may take him again, and again, ſo often as he eſcapeth, although he get out of view, or that he flee by into another county. See Br. Faux Impriſonment 18. & Br. Eſcape 4. 12. & lib. Intrac. tit. faux impr. div. 10.

Co. 3. 44. *Eſcape.*

If an officer ſhall arreſt another by force or vertue of a warrant of the old Sheriff, after that the Sheriff is diſcharged, &c. an action of falſe impriſonment will lie both againſt the Sheriff and againſt the officer for ſuch an arreſt.

Cromp. 205. b *Warrant of the old Sheriff.*

Iſſint lon aſcun que n'ad authority fera un Precept al Officer de arreſt auter, & ſur ceo l'officer arreſt le party, le action gira eybien vers le Judge, &c. que fera tiel precept, come vers l'officer.

2. H. 7. 2. Br. Retor. 83. If a man be taken and impriſoned upon a warrant from a Juſtice of peace in the Country, for ſurette of the peace, or for ſome riot, or forcible entry, or the like, and after a Capias cometh out of the Kings Bench, or Common place, &c. to the Sheriff to attach or arreſt the ſame perſon, and the Sheriff upon the Capias returneth all this (and bringeth the priſoner into the Court) yet the priſoner ſhall firſt anſwer to the plaintiff, and after his anſwer put into the Court he ſhall go under bail, and then be remitted or ſent back by the Sheriff into the Country, there alſo to make his anſwer before the Juſtices of peace; ſo that the Sheriff upon a Capias to him delivered to attach or arreſt ſuch a priſoner, formerly committed to the Gaol by the Juſtices of peace, is to bring ſuch priſoner into the Court upon the Capias, as it ſeemeth. *To arreſt one that is arreſted before.*

Note that when a man is in the cuſtody of the Sheriff by Proces of Law (or by force of any lawful warrant) and after another writ is delivered to the Sheriff to take the body of him that then is and was in his cuſtody before, now preſently is that priſoner in the cuſtody of the Sheriff by force of this ſecond writ; and in ſuch caſe if the Sheriff ſhall refuſe to take the ſecond writ, or ſhall not keep the priſoner thereupon, it is an eſcape in the Sheriff; and ſo the Sheriff in this caſe muſt be anſwerable for his priſoner, although he do not arreſt him by the ſecond writ. Co. 5.89.

Eſcape.

Where the defendant being taken at the Kings ſuit upon a Capias utlagatum, or upon a Capias pro fine, ſhall be preſently in execution for the plaintiff. See hic poſtea tit. Executio ſur Capias ad ſatisfac'.

What perſons may be ſued and arreſted, what not.

Note that the perſon of the King is ſo ſacred, as that no violent hands may in any caſe be laid upon him; Neither may he be impleaded or ſued by action, as a common perſon may; But whereſoever the King ſhall ſeiſe any mans land, or take away any mans goods (having no title by order of his Laws ſo to do) the ſubject for his remedy in all ſuch caſes, is driven to ſue unto his Soveraign by way of petition only, for that no action lyeth againſt the King. Stamf. de Prærog. 42. 72. 73. vide plus f. 255. & ſcribe hic.

Noble men, where they may be arreſted. See hic c. 21.

Knights, and Burgeſſes of the Parliament, (nor their ſervants) may not be arreſted. ibid.

Neceſſary Officers which attend upon the Parliament (as the ſerjeant of Armes, the porter of the door, Clerks, and the like) ſhall not be arreſted for debt, or the like, Cromp. Author. des Courts fol. 11.

But note that the parliament doth give no priviledge tempore vacationis ſed ſedente Curia, 2.E.4 f.8.Br.Priviledg.56.

Alſo ſuch perſons whoſe attendance is neceſſary in any of the Kings Courts at Weſtminſter, ſhall not be arreſted: As the Judges, nor any of their neceſſary ſervants, or Miniſters of the Court. Cromp. ibid.

If any Officer, Clerk, or Atturney of any of the four ordinary Courts who ought to be attendant to the Court, ſhall be arreſted, during the time of their attendance, they ſhall have a Writ of priviledge. Dyer 287.

Every other perſon who hath any ſuit in any of the Kings Courts at Weſtminſter, ſhall be diſcharged of any arreſt, either of his body or goods which are neceſſary for the maintenance of the ſuit; *mes ceo ſa. per bre. de priviledge, q. ad en luy un Superſedeas.* Finch 52.

Concerning Eccleſiaſtical perſons Mr. Bracton lib. 5. cap. 32. ſaith thus; Excuſari poterit vicecomes propter privilegium clericorum, ut ſi preceptum domini Regis habuerit de attachiando aliquem qui clericus ſit,

ſit, & qui plegios invenire noluerit propter privilegium clericale, nec laicum feodum habuerit, per quod poſſit diſtringi, nec debet dominus Rex manus in eos mittere, &c. Nullum aliud ſuperit remedium, niſi quod ex parte domini Regis mandetur Ordinariis loci, ſicut Epiſcopis, *&c.* quod faciant talem Clericum venire ad talem diem, niſi forte teſtatum eſt quod talis Clericus habet laicum feodum,& Catalla in laico feodo per quæ diſtringi poſſit, & vicecom. per fraudem mandaverit quod nihil habuerit, in quo caſu vicecom. in man. domini Regis remanebit, *&c.*

Herewith other books do agrée, ſc. that the bodies of Eccleſiaſtical perſons were not to be arreſted in ſuits between them and other Subjects; and therefore in caſes of debt, treſpaſs, and the like, a venire fac. Clericum was awarded. 32. H. 6. 11. per Priſcot. (otherwiſe it was in caſes of felony, or for contempts. See 21.E.3.& 10.H.4.Fitz.proces 50. 198) & Fitz. 131. a. 266. ab.

But where the firſt original Proces is to attach or diſtrain the defendant, there if he be a Clerk. he muſt be ſummoned by his perſon, or by his land if he hath any lay fee Finch. 135. and yet in debt, treſpaſs, and the like caſes, where a Capias lyeth, there it ſeemeth a Capias is awarded againſt them of common courſe, and then their bodies may be arreſted, *&c.*

And note that every Subject of this Realm for any injury done to him, in his goods, or lands, or to his perſon, may ſue any Subject, be he bond, or free. woman or infant, Religious perſon, or be he outlawed, excommunicated, or any other without exception; for by the Statute of Mag. Chart. c. 29. Nulli negabimus aut differemus juſtitiam vel remedium. Dyer. 104.

By which words now every man for any injury or wrong done to him, may have a writ of courſe in the Chancery againſt any other ſubject, without ſuing to the King for it; and without any fine to be made for it. Dr. & St. 18.

The place.

50.E.3.c.5. 1.R.2.c.15. See Stat. 1. Mi. cap.3. But if any of the Kings officers, or other perſon, do arreſt any Miniſter, or other perſon, which is doing any divine ſervice in the Church, Churchyard, or other place dedicated to God, he ſhall be impriſoned, and puniſhed at the Kings pleaſure, and further ſhall recompence the party arreſted; but no people of the Church ſhall keep them within the Church by fraud or colluſion.

And yet the Sheriff or other officer may ſerve proces, and execute the Kings writ within the Church, ſo that it be not done to the diſturbance of divine ſervice. See 6. H. 4. fol. 3. & hic. Retorne de ſanctuarie fol.

Note, that Dies Dominicus non eſt juridicus: ſo as the Kings courts may not ſit, or hold plea upon that day. Co. L. 135. a.

Alſo upon a recovery the Sheriff may not deliver ſeiſin upon the Sunday. So upon a fine levied with Proclamation, if any of the Proclamation be made upon the Sunday, all the Proclamations are erroneous.

And ſo a *Scire facias* out of the common place bearing date or teſte upon a Sunday, it is error. vide plus Fitz. 7.

The Time. But yet the Sheriff or his officer may make an arreſt, or execute any Proces, or do any other miniſterial act upon the Sabbath day, or in the night time, and that as well at the ſuit of a ſubject, as at the ſuit of the King; for the officer of Juſtice ought to execute his office whenſoever he can find the party; otherwiſe peradventure they ſhall never execute their Office nor arreſt him, quia qui male agit, odit lucem; and if the Officer ſhall not arreſt him when he findeth the party and may arreſt him, the plaintiff ſhall or may have his action of caſe againſt the Sheriff or Officer, and ſhall recover in damages, whatſoever he loſeth or is indamaged thereby. Ce. 9. 66.

Night. And yet the Sheriff, nor his officers ought not to break open any mans houſe in the night time, to execute any Proces, or to do any other miniſterial act: For the Law giveth no colour to break a mans houſe by night. Fitz. Juſt. of p. f. 10. b. for this laſt.

And yet the breaking of a houſe in the night time, for the apprehending of Traytors or felons, being therein; or for the arreſting or pacifying of affrayors, and keeping of the Kings peace, ſeemeth to be juſtifiable. Alſo ſummons in a Præcipe, may not be in the night. hic c. 31.

Alſo upon a Capias or Latitat, &c. the Sheriff may arreſt the party, the ſame day in which the writ is Returnable, (or upon the day of appearance:) yea if after the day of the returne of the writ, and day of appearance before the fourth day, the Sheriff doth arreſt the party, it is good, becauſe the firſt, ſecond, third, and fourth days, be all as one day; and ſo was the better opinion of the book 33. H. 6. fol. 45, 46. ſc. that if any man was arreſted after the firſt day, it was good; for that no appearance ſhall be before the fourth day; neither is any man demandable at the firſt day (except in a writ of right) neither ſhall any man be received to plead in any caſe, before the fourth day; yet the very day of returne is the day in Law, and to that day the judgement hath relation, but no defendant ſhall be recorded till the fourth day be paſt. Co. L. 135. a.

I have ſeen the report of a caſe between *May* and Hoper, Anno 2. Jacobi Regis Rotul. 279. to this purpoſe; A Latiat was directed to the Sheriff to arreſt Hoper, Returnable die Lunæ proxime poſt Craſt. *Sanctæ* Trinitatis (which that year was the tenth day of June) and the Sheriff upon the ſame day, ſc. the tenth day of June, did arreſt Hoper, and took a bond of him the ſame day, bearing date the ſame day, with condition to appear Coram *Domino Rege*, die Lunæ proxime poſt Craſt. *Sanctæ* Trinit. ad reſpond. &c. After the Sheriff brought an action of debt upon this obligation, and the defendant prayed Oyer del Oblig. &c. and then pleaded all this matter aforeſaid, and the plaintiff did demur; and it was agreed by Fenner and Yelverton Juſtices, that upon the ſame day in which the writ was returnable, and which was the day of appearance, the Sheriff might well enough arreſt the defendant: but the doubt in this caſe was, what day ſhould be underſtood by the day mentioned in the condition (being the ſame day upon which the obligation was made) for that there were no

words

words of proximese quente. Now whether it should be taken for the day whereupon the obligation was made, or for that day twelvemonth, was the question, but it was not resolved.

Sic nota que sur jo. done par Proces, le quel est tots foits le Common jour, (& ney. certen jo. come Lune, Martis,&c.) le quarte die post est allow per le jo. dl appearance; & issint sont tots les Entres, Obtulit se quarto die post; & perces ou le bre. est de appear, &c. in Octabis sancti Hillarii (ou ascun ant. titl common jo. de Retorne) la le party poet app. quarto die post, & a celintent, le prim. jour, & le quart jo. & tots les jours mean, sont seq. sicome un jo. in ley (ant. ou le jo. done par Proces, est jo. certen. come Lune, &c. ut super, is el. jo. dl appearance) vide 12.H.4.24.1 H. 6. 4. Fitz. 25. c. Br. *jo. in Court.* 57. Finch. fol. 63. Co. L. 134. b.

CAP. 23.

Warrants upon mean Proces.

Warrants for mesne Proceſs.

Now for that the Sheriff having all Writs and Proces directed unto him as aforesaid, and yet it being a thing impossible for him to execute them himself, sc. for him to do execution of all, therefore the Sheriff (or his Undersheriff, to whom such proces usually are delivered) are to make out warrants to their Bailifs or other Officers, for the execution of such mean proces.

And these warrants must be made according to the several natures of the writs, which for the substance will direct them therein.

And yet the Sheriff may arrest a man, when he hath a writ, without making any warrant; and so may his servant (or any other person by the Sheriffs commandment) where the Sheriff shall deliver him the writ. 21.H.7.23 a.

But if the proces cometh to the Undersheriffs hands, he must make out these warrants in the high Sheriffs name.

The form of a general warrant to cause a man to appear,&c.

Cantab. A. B. Miles vicecomes com. prædict. ballivo Hundredi de R salutem. Ex parte domini Regis tibi mando quod capias *I. S.* si *&c.* Et eum salvo, *&c.* ita quod habeam corpus ejus coram Justic. domini Regis apud Westmon. in octabis sancti Hilarii ad respondend. *C. D.* de placito debiti (or transgress. according to the writ) Et hoc &c. Datum sub sigillo officii mei decimo die Aug. Anno regni domini regis, nunc Angliæ,&c. xx.

Per *A. B.* milit. Vicecom.

The

The form of a ſpecial Warrant.

Cantebr. A. B. Miles vic. com. præd. ballivo hundredi de R. (nec non *I.W.T.B.* ballivis meis hac vice, & eorum cuilibet ſalut'. Ex parte domini regis vobis & cuilibet veſtrum conjunctim & diviſim mando, q. capiatis ſeu &c. *I. S.* ſi &c. & eum ſalvo &c. Ita quod habeam corpus ejus * coram domino rege apud Weſtm. die Jovis prox. poſt Octab. ſancti Hillar. ad reſpond. *C. D.* de placit. tranſgr. &c. Datum &c. ut ſupra.

* Note if the writ cometh out of the Kings Bench, then the warrant muſt be, Ita quod habeam corpus ejus coram domino rege &c. or coram nobis.

But if the writ come out of the Court of Common Pleas, then it muſt be, Ita quod habeam corpus ejus coram Juſtic. domini regis &c. or coram Juſtic. noſtris. See plus hic c. 75.

And after the ſame manner, muſt the Returne of writs be: as upon a fieri fac. the Sheriff muſt Returne, & Denarios illos habeo coram domino Rege, if the writ come out of the Kings Bench: but if the writ be out of the common Pleas, then Coram Juſtic. infraſcript, &c. and if out of the Exchequer, then Coram Baronibus infraſcript, &c.

Another good form of a Warrant.

Cantebr. A. B. Miles vic. com. præd. omnibus ballivis meis (vel omnibus ballivis infra com. præd.) tam infra libertat. quam extra, necnon *I.B.* & *C.D.* ballivis meis hac vice tantum, ſalutem. Ex parte domini regis vobis & cuilibet veſtrum conjunctim & diviſim mando, quod Capiat. ſeu, &c *I.S.* ſi &c. Et eum ſalvo, &c. ita quod habeam corpus ejus, coram, &c. ut ſupra. W. 14

This laſt warrant is a good form to be uſed upon executions, or upon Capias utlagatum, &c.

Another plain form of a Warrant.

Decimo die Aug. Anno Domini, 1622.

By vertue of the Kings Majeſties writ to me directed, returnable Coram domino rege apud Weſtmon. die Jovis proxim. poſt xv. ſancti Hillarii &c. you ſhall arreſt I.S. if he may be found within my Bayliwick, to anſwer to C. D. in a plea of Treſpaſs, &c. (or in a plea of Debt according to the writ.) Datum ſub ſigillo officii mei, die & anno ſupradictis.

Per *B. A.* mil. vic.

To *I.P.* and *R.S.* my ſpecial Bayliffs in this behalf, jointly and ſeverally greeting.

If the Sheriffs warrant be directed to two men jointly, to arreſt another, yet either of them alone may do it.

If

If the Sheriff directs his warrant to four or three jointly, or ſeverally to arreſt a man, yet two of them may arreſt him, becauſe it is for the execution of juſtice. Co. l. 181.

The form of a bond for appearance of the priſoner. See hic poſtea tit. Obligation.

See other forms of warrants hereafter.

CAP. 24.

The nature of Executions, and of how many ſorts they are, and how they are to be done and executed.

Executio eſt fructus & finis Legis, *Co. L.* 289

Executions are of divers ſorts, and in divers manners to be executed and done, ſc. *Executions.*

1 Statute Merchant } *de corps, terres, & biens.*
2 Statute Staple, }
3 Recogniſance, *de Medietate terrarum, & touts les biens: & aſcun foits, del Corps, ters, & biens.*
4 Elegit *de Medietate terrarum, & de tout, les biens le dettor.*
5 Capias ad ſatisfaciendum, *de corps tantum.*
6 Fieri facias, *de biens tantum.*
7 Levari facias, *de proficuis terre, & de biens.*

ſur

Execution in our Law ſignifieth the laſt performance of an act as of a Judgment, Statute or the like: and theſe executions are of two ſorts one finall, another with a quouſque, &c.

Co. 5. 87 An Execution final, is, when the Defendants Lands are extended, or his goods ſold, and delivered to the Plaintiff, who accepting this in ſatisfaction, ends the ſuit.

An Execution with a quouſque, and not final, is in the caſe of a Capias ad ſatisfaciendum, where the body is taken to the intent to ſatisfie the Plaintif; but is no ſatisfaction, but a pledge for the debt. Neither is the parties impriſonment abſolute, but until he doth ſatisfie or agree with the plaintiff.

Nota que le ſtat. Merchant, eſt bond ou obligac' de record, acknowledge devant le Maior de London, York, Briſtol, *ou* Cheſter, *ou de aut' City, ou devant le Bailiff daſc' borough ou ville, ou devant auters perſons la a ceo purpoſe appoint; & eſt ſcale ovesque les ſeales del dettor, & del Roy; le forme de quel veies in* Weſt. 106. Fitz. 130. c. P. ſtat. 1. *Sur ſtatute merchant.*

Si ſtat. Merchant ne ſois ſeal per le party, ne vant. 6. R. 2. Fitz. Exec' 131.

If

If a man be bound in a Statute Merchant (and do not pay the debt at the day) execution shall be done thereof in this manner: first (the Conusee may come to the Mayor or other Officer before whom the statute was acknowledged, and pray him to certifie the same into the Chancery under his Seal, &c. and if he will not certifie it, then) a writ of Certification must be sued forth of the Chancery, directed to the said officer, &c. of the place where the Statute was acknowledged, to certifie the acknowledgment of the same Statute into the (petty bag Office in the) Chancery, and upon that Certificate) (a writ of Execution, &c. first a Capias shall go out to the Sheriff against the body, (esp of the Conusor (if laicus sit) to take his body, if he can be found, and command the Sheriff to keep him safely in prison, untill he hath agreed for or fully satisfied the debt: But the debtor after he is taken, hath liberty given him (within a quarter of a year) to sell his Lands and goods to discharge his debts: and if he do not agree for his said debt within the next quarter, or if he cannot be found, then all his lands and goods upon an extendi facias shall be praised by a Jury, and shall be delivered (by the Sheriff) to the Creditor by a reasonable case to hold untill the debt be duly paid; and yet nevertheless the body of the debtor if he be taken, shall remain in prison untill the debt and damages be paid.

Certifie in le Chancery. 1. Execution ferr' del corps.

9 Del terres & biens.

Statute de Acton Burn. 13. E. 1. & Stat. de Mercator 13. E. 1. Fit. 130, 131 & 144. c. P. Statutes 1.

And this writ may be returnable into the Court of common Pleas, or into the Kings Bench. Fitz. 130. g.

But upon the return by the Sheriff (of that Shire to whom the Capias was directed) q. laicus est, & non est inventus in balliva sua, then shall go out an Extent (or Extendi facias) against all the conusors lands and goods: quere vide le. Regist. 147.

Non est inventus.

And upon such an Extent come to the Sheriffs hands, the Sheriff shall or may presently cause the lands, and moveable goods of the debtor to be praised (and delivered to creditors, or else he may cause the goods to be sold as far as the debt doth amount) and the debt without delay to be paid to the creditor. See Stat. de Acton Burnell 13. E. 1 And such valuation or Extent of the lands and praising of the goods, shall be by a jury.

The Sheriff shall cause the same goods to be delivered to the creditor at a reasonable price, as much as doth amount to the debt.

And if the praisors of the lands, or goods do set an over high price, to the damnage of the creditor then shall the things so praised be delivered to the praisors at the same price, and they shall be forthwith answerable unto the creditor for his debt, &c. and yet if the goods be delivered to the praisors, they shall not pay the money until the days which are assessed and limited in the Extent: but they shall presently become debtors for the duty and chargeable with the payment thereof, at such days as the rents are payable, or the revenues receivable, and not before Plo. 205. b.

N. bre. 165. Fitz Extent. Plo. 8. & 127.

Also note, that the Sheriff must sell the goods to them which offer most for them; and if the Sheriff shall sell them at any under price, it seemeth the debtor hath no remedy. See the Statute de Acton Burnell.

13. E. 1. If the debtor have no moveables whereupon the debt may be levied, then shall his body be taken and kept in prison untill he hath made an agreement, &c.

The creditors shall be allowed for their damages, and all costs, labours, suits, delays, and expences. Stat. de Mercator. & Co. 4. 67.

And so soon as the debt is levied, the body of the debtor shall be delivered with his lands. Ibid.

If the Sheriff do not return the Capias; or do return that the writ came too late, or that he directed it to the Bailif of some franchise, he shall be punished, and shall yield damages to the party grieved, according to the Statute of Westminster: 2. c. 39. Stat. de mercatoribus. Tamen vide tit. Retornes Libr. Intra. fol. 595. hic c. 58.

Note that though it be within a Franchise, yet the Sheriff is to execute it himself. See hic c. 58.

Si l. debtor soit Noble home & Peer de Realm, vuc. son Corps in aſcun caſes poet eſtre priſe in execution, ſur un Stat. hic. c. 21.

See Fitz. 131. c. & 6. b. Stat. le Mercator. Vide Fitz Execut. 79. If the Sheriff return that the debtor is a Clerk, then there shall go out an extent against his lands and goods (only) to be delivered by a reasonable extent as aforesaid: but his body shall not be taken, by this Statute. And yet if the writ be to take his body (being a Clerk) the Sheriff may then take his body in execution and the party is to procure a special writ in such case, to be directed to the Sheriff, commanding him not to grieve or molest him, and that if he be taken, that then he shall deliver him, except the Sheriff knoweth any cause why he should not enjoy the priviledge of a Clerk Fitz. 131. a. Or the Sheriff needs not to meddle with the body, but may Retorne Quod Clericus, &c. *Clerk.*

If the debtor found sureties (which acknowledged themselves to be principal debtors after the day passed) they shall be ordered in all things as the principal debtor, &c. for the arrest of their bodies, and delivery of lands and goods, Stat. de mercator. *Sureties.*

But so long as the debt may be fully levied of the goods of the debtor, the sureties shall receive no loss. Stat. de Acton Burnell.

And if any of these debtors (being in prison) shall happen to escape, the Sheriff or Gaoler must answer the body or the debt; and therefore it behoveth the Sheriff and Gaoler that the prisoners be safely kept. Stat. de Mercator. *Escape.*

5. H. 4. c. 12. Note that when any Statute Merchant is certified into the Chancery, and thereupon a writ awarded to the Sheriff, and returned into the common place, and the Statute there once shewed, that howsoever the proces after the same shewing be discontinued, that at what time the party sueth to have the proces recontinued, and to have execution of the same Statute, that he Justices of the Bench where the Statute was once shewed may upon the same record make and award full execution of the Statute Merchant aforesaid, without having the sight thereof another time.

And yet ſee Dyer f. 180. Termino Paſch. Anno 2. El. where the conuſee of a Statute Merchant having the ſame certified into the Chancery upon a Certiorari directed to the Mayor, thereupon ſued a Capias againſt the conuſor returnable into the Bench, at which day the Sheriff returned Non eſt inventus, and the conuſee ſhewed there the Statute (as he ought) and had another Capias, before the return whereof the conuſee died, and it was doubted whether his executors ſhould have a Scire facias againſt the conuſor, or that they ſhould begin of new, ſc. to ſue a new ſpecial writ out of the Chancery to the Mayor, to make certificate (notwithſtanding the firſt Certificate) and to have out of the Chancery a new Capias or no, or whether (at the ſuit of the Executors) the Juſtices of the bench might have awarded an Alias Capias, or a writ of Extent upon the firſt proceeding or not; But it was agreed by the Court that no Scire facias did lye in this caſe; but upon oath made by the Executors in the Chancery, that the debt is not ſatisfied, they ſhall have a new Certiorari to the Mayor, &c. to make a new certificate of the Statute, and ſo to begin all again of new, vide Fitz. 131. b. c. Dyer 180.

Nota q. ſur Stat. Merchant, home poet aver action de debt; ou pt. ſuer execution accordt. al Stat. 3. E. 4. 27. 29. E. 3. 22. Br. Stat. 31. & 47.

Note alſo that if a man be in execution upon a Statute Merchant, he muſt be found in priſon of the rents and revenues of his lands which are in execution; viz. the creditor out of the rents and revenues of his lands is to finde him bread and water; the which coſts notwithſtanding the debtor muſt recompence the Creditor again with his debt, before the debtor be let out of priſon. Stat. de Acton Burnel. & Fitz. 133. c.

CAP. 25.

Statute Staple.

Statute Staple.

LE Statute Staple eſt de deux ſorts, ou in deux manners:

1. *Lun per force del ſtatute* 26. E. 3. c. 9. *& ceo* proprie ſic dicitur.

2. *Lauter per force del ſtatute.* 23. H. 8. c. 6.

Le primer eſt obligation de record, acknowledge devant le Maior del Staple, in le preſence de un del Conſtables de meſme Staple, & eſt ſeale ove le ſeale del Staple, & ſeal del partie: mes tiel Statute Staple ne ſerra priſe. ſinon tantum inter merchants de meſme Staple, & pur merchandiſes de meſme Staple. Stat. 23. H. 8. c. 6. 27 E. 3. c. 9.

Lauter eſt obligation auxy de record, & de meſme le nature & force que le primer eſt. quant al execution de ceo: mes eſt acknowledge devant lun del chief Juſtices, and in lour abſence (hors del terme) devant le Maior (del Staple al Weſtminſter) & le Recorder de London, & eſt ſeal (oveſque trou Vid. pl. 62. b.

ſeales,

ſeales,ſc.) oveſque le ſeales del conuſor, del roy,& del un des dits Juſtices, ou del Maior & Recorder. 23.H.8.c.6.P.Stat.5.7.& 9.

Les formes de ceux Statutes Staple, veies 23. H.8. c.6. P.Stat.6.& in Weſtm.108.109.

27.E.3.c.4. *Nota que touts ſtatutes (Merchant & Staple) ſerra port al Clerk de Recog. deins 4.mois,& inroll deins 6.mois,autrement tiel ſtatute ſerra void vers purchaſors,&c.* P.Stat.15,16.

Ceo q. eſt en execution ſ. ſtat-ſtaple, ne ſa. deliver ſ. Scire fac. vers party, & ſurety ſ. ceo trove al Roy ſole, mes trover ſureties ſeveralmt. cy bien al Roy, come al party. 11.H.6.c.10.

27.E.3.c.9. 25.Ed.3.c.9. Fitz.131.d. A Statute Staple muſt be certified (into the Chancery) in the like manner as a Statute Merchant, and upon that Certificate a writ of Execution ſhall preſently go forth, both againſt the body (ſi laicus ſit) and againſt the lands and goods of the conuſor, returnable in the Chancery in the petty bag Office there, (and not into the Court of Common Pleas, or Kings Bench, as the Writ of Execution upon a Statute Merchant ſhall.) And upon the writ of Execution, the Sherif ſhall take the body of the conuſor, and ſhall alſo (per ſacramentum proborum & legalium hominum, & juxta verum valorem. Fitz.131 d.) preſently extend, and priſe, and ſhall ſeiſe into the Kings hands his lands, goods, and chattels; and that extent and preſement or valuation of the lands and goods ſhall return and certifie into the Chancery as aforeſaid, and thereupon the recogniſee ſhall have another writ called a Liberate to the Sherif, out of the Chancery to deliver to the conuſee thoſe lands and goods to the value of his debt,&c. and upon that Liberate delivered to the Sherif, then ſuch lands and goods as are taken in execution, ſhall without any other inquiſition, and according to the former extent or valuation, be delivered to the conuſee by the Sherif, and not before. And this Execution ſhall be made in manner as before is declared upon a Statute Merchant. 27. E 3.c 9. Vide Plow. 62. b. & Fitz.131.e.132. the form of the Liberate. *Certificat in le Chancery.* *Liberate.*

Et ſic nota, que ſur Statute Merchant lobligor ou conuſor ſerra impriſon pro dimid' ann'. Et ſil ne vend ſes terres deins meſme temps pur payer ſes debts, donque ſes terres ſerra deliver al obligee tanque ſon det,&c. ſoit ſatisfie. Mes ſur Statute Staple le dettor ou conuſor apres que il eſt priſe, navera liberti de vender ſes terres, & biens, deins le demy an, come il avera ſur Statute Merchant; Mes per force de ceſt Statute Staple, ſi le money ne ſoit pay al jour, maintenant apres certificate del ceo in le Chancery, le creditor poit aver execution del corps, terres, & biens del dettor, ſc. le conuſor ſerra impriſon, tanq; il ad fait gree al creditor dl debt, & damages, & touts ſes terres & biens ſerra extend inſtanter; Mes ne ſa. deliver al conuſee tanq; le liberate veigne al vic. 23.H.8.c.6. *Regule.*

Auxy nota que ſur Statute Staple le extent ſerra primes fait, & returne, & puis briefe de Liberate *ſerra agard; mes delivery ne ſerra fait al commencement, tanque le choſe appiert certainement per le retorne del vicont.* Plo. 62. b.

31.H.8.46. *Touts obligations & ſpecialties faits al Roy (ou a ſon uſe, pur aſcun cauſe) ſerra de meſme force que Statute Staple eſt.* 33,H,8.c.39.& 22. *Dettes le Roy.*

Touts obligations prise de Eccleſiaſtical perſons pue lour firſt-fruits, ſerra de meſme le nature & force que Statute Staple eſt. 26. H.8.c.3.

Les terres de (pluſors) accountants al Roy, ſerra liable, & miſe in execution, ſicome ile uſſent eſtre lie in Statute Staple. 13. El. c.4. P. Account. 39.& 39. Eliz.c.7.

Le heire que claime per done ſon anneſter, ſerra lye a payer le det le Roy, per ſtatute 33.H.8.c.39. & 34.H.8.c 2. Plo.440. Co.7.19.

Iſſint le heire in taile (per meſme le ſtatutes) ſerra liable de payer det le Roy due per ſon Anceſter. Ibidem. Vide Plow.240.b.249.b.554.b.& Fitz.217.c.

Mes ſi tenant in taile deveigne in det al Roy per receit des deniers del Roy, ou autrement, ſinon que ſoit per judgement, recogniſance, obligation, ou auter ſpecialty, & moruſt, la terre in le ſeiſin del iſſue in taile, per force del dit act de 33 H.8. *ne ſerra extend pur tiel det le Roy: car le ſtatute de* 33.H 8 *extend ſolement al dits 4 caſes; & touts auters dets le Roy remaine al common ley.* Co.7 21

Si tenant in taile deveigne in det al Roy, per un des dits 4. voies (ſc. per judgement, recogniſance, obligation, ou auter ſpecialty) & moruſt, & devant aſcun proces ou extent, le iſſue in taile bona fide *alien (ou leſſe) le terre intailed, ore ceſt terre ne ſerr' extend per force del dit act de* 33.H.8. Co.7,21

Iſſint, ou det fuit originalment due al ſubject, & apres deveigne ou accrue al Roy per reaſon de attainder, utlawry, forfeiture, done del partie, ou per aſcun auter voy, ou meaſne, tiel det neſt deins le dit ſtatute de 33.H.8. *de charger terres intailed, in le poſſeſſion del heire in taile.* Co.7.21

Mes terres in feeſimple ſueront extendable al common ley (pur det le Roy) in quecunque mains que eux deviendront; & pur ceo quant al eux le dit ſtatute de 33.H.8. *ne fuit forſque* declarativum antiqui juris. Co.7.21 ibidem.

Deux jointenants in fee, lun de eux eſteant debtor le Roy moruſt, lant' tiender' diſcharge. Fitz.Execut.113.

Le heire ſerra chargeable de paier det le Roy, coment que il ne ſoit noſme (ou que ceſt paroll heire ne ſoit compriſe) deins le Recogniſance, Obligation, ou ſpecialty. 33.H.8. c.39.

Roy ſerra preferre in ſon ſuit & execution, devant common perſons, ſc. *ſi ſon ſuit ſoit commence devant l'aut' ad judgement, vide les ſtatutes,* 9.H3. c.18.& 33.H.8.39.& hic c.10.

Auxi Dyer 67. *le vic. ſes bre. de extendi fac (a' aver execution ſes ſtat. ſtaple) extend les ters dl deff. & preiſe ſes biez & eux ſeiſe in mains le Roy, come le dit bre. command, & avant q. fuer. deliver per le vic. al conuzee, aut. bre. de Prærog. viet al vic. hors dl Eſchequer pur la Royn, de levyer dets le Royn de* 100 l. &c. *Et le vic. retorne le prim. extent, & q. ultra e. bie & ters, n' ad autres, & ſuit teuus q. le Royne aver a execution de dits bie. & ters, per ſa Prær g. Eo q. le property de ax. ne fuit in le conuſee, tanq; ſont deliver a luy per le bre. de liberate, & le vic. fuit amerce per le ſpecial retorne,* &c. *Et accordt. a ceo fuit tenus per Curiam (in Communi Banco)* ANNO 31. Eliz, que

que ſes extendi facias d'aver execution, & le vic. fiſt extent accordt. dl ters & bie. le party, & ex ſeiſe in mains le Roy acoordt. al bre. que ore le poſſeſſion dl terr. ne le property dl bie. ne ſa. in cey. par q. l' execution eſt fait deux q. il. ſont deliver a luy per le vic. ſur le Liberate, c. les pol. dl bre. ſont de ſeiſ. in mains le Roy, &c. iſſt. a. il. ſont in le Roy tanq; delivery, &c. vide autres ſimble caſes. Dyer 197. 296. & 307.

Co. 8. 171 *Debtor le Roy poſſeſſe dun leaſe vend ceo* bona fide, *ceſt lier le roy, car forſque chattell.*

Co. 11. 93 *Nota que le Roy levier le ſumme de que aſcun eſt chargeable a luy, non ſolement vers le party meſme,* ſc. *de ſon corps, & ſes terres & biens in ſes mains demeſne, mes in les mains de ſon heirs, aſſigns, exec. ou adminiſtrat. & fil. nat. execut. ou admin. donques in les mains des poſſeſſors des biens del mort.*

CAP. 26.

Queux terres, & biens ſerra extend ou priſe (per le Vicount) in execution (ſur ſtatute ou in bre. de debt, &c. apres judgment) in caſe de common perſon.

NOta que ſur ſtatute merchant, ou ſtaple, touts le fee ſimple terres, queux le conuſor avoit al temps ou jour del dits ſtatutes acknowledge, ou al aſcun temps enapres, ſerra liable al dits ſtatutes, in quecunque mains que ils vie vder. apres, per alienation, feoffement, ou anterment. Stat. de Mercatoribus 13. E. 1. 27. E. 3. c 9. & 23. H. 8. c. Co. 3. 12.

Et vuc. ſi un auter ad c. ters in execution per elegit; ou q. un auter eſt ejus per diſcent, &c. il. ne ſa. miſe hors de poſſeſſion ſa. Scire facias; Et per ceo in tiels caſes le vie. doit returne tiel ſpecial matter, ſur le bre. de extendi facias. f. Reto. 112. ſc. **the Sheriff in the firſt caſe may return that he hath extended the land of the defendant, but that he cannot deliver the ſame to the plaintiff, for that another had the ſame in extent before.** hic. c. 28. & 27.

Si le debtor moruſt, le corps de ſon heir ne ſerra priſe; mes ſon fee ſimple terres que diſcend a luy del conuſor ſerra priſe (in forme avandit) ſi ſoit de pleine age ou cuant il viender al plein age, quouſque le det ſoit levie, ſtatute **de mercatoribus.**

Et iſſint ſuit le common ley devant, ſc. que in des vers le heir, le plt. avera tout le terre, que diſcend al heir, in execution, & vuc. navera. donques exec. daſcun part del terre vers le pere meſme.

Nota q. le heir ne ſa. charge per debt due per ſon auncеſtors, neq; per le common ley, nec per ſtatute, ſil ne ſoit Noſme. Vuc. le ter que le heir ad ſa. extend per elegit, ſur Scire facias pl. vers luy come terre tenant, de terre liable al execution. Dyer 271.

L' executors ſa. charge comt. ne ſont nom. Autmt. dl heir. Co. L. 209.

Nl

Nl execution ſa. ſue vers le heir deins lige, ſes ſtat. merchant, ou ſtaple, Recog. Elegit, ou Obligation. Co.L.290.

Home ſeiſie de ters in Gavelkinde ad iſſ. 3. Fitz & *lye luy in & ſes heirs in obligation, & mor. Action de debt ſa. maintain vers tots les fits.* Co.L.137.b.

Auxi nota que ad eſte tenus que le heir ne ſerra charge in det lou le executors ont aſſets; vid. Fitz.Exec.25.Br.Det.237.7.Ed.4.13.& Plo.193.a.b.

Mes (a ceo jour) le ley ſemble autrement, ſc. *que eſt al election del creditor de ſuer le heire, ou le executor, quant ambid' ont aſſets;* vide 4.E.4.25.22. H.6.4. 10.H.7.8. Doct.& Stu.153.Dyer 304. & Plow.439 440.

Auxy ſemble que ſi le heire ne confeſs laction, & mo ſtre le certainty del aſſets que il ad per diſcent, mes plede riens per diſcent, ou eſt condemn per default, &c. *que la le plaintif avera execution de ſon auter terre, ou de ſes biens, ou de ſon corps,* per Capias ad ſatisfac. Plo.440.

Nota que fee-ſimple terres del heir' queux il ad per diſcent, jour del bre purchaſe, ou apres, ſerra liable: autrement ſil ad alien devant le brief purchaſe, ſinon ſoit per covin, Co.5.60.& 10.H.7.8. Co.L.102.

Poſſeſſion in ley diſcend ſur le heire, luy charger.

Iſſint lou il entre pur condition, &c. Br.Aſſets 8.

Pur ters in Gavelkinde tots les fits ſa. lyable per det lo. pere,

Reverſion ſur eſtate pur vie diſcend al heire, ceo luy charger, &c. Br. Aſſets 12.19.

Reverſion ſerra miſe in execution, & le Judgment ſerra cum acciderit, & in le meſme temps del rent, Dyer 373. Fitz. Aſſets 237.

Reverſions, & remainders ſa. extend in quecunque mains que il viendront per Cur'. Mich.36.Eliz.

Nota in det home avera execution de nul terre, mes de cel que le def. ad le jour del judgment done ou rendus. 2.H.4. Fitz.Execut.24.

Si home ſua ſtat. merchant de parcell de les terres, in noſme de tonts les terres, il naver. auter execution in apres. Fitz.Exec.134.

Si jeo nay forſque un acre per diſcent, jeo ſerra charge de 1000. *li per obligation fait per mon pere,* per Belk.40. Ed 3.15. Fitz. Execution 32. vide & quære. *Car ſemble que le heir poit conuſtre ceo que a luy eſt diſcend, & demand Judgment ſi de plus que de value del ceo il doit eſtre charge.*

Terres intaile d ſont liable forſque durant le vie le conuſor come ſi tenant in tail ſoit lye in ſtat. an recogniſance, le terre taile ſerra lye durant ſon vie, mes neſt lie, vers liſſue in taile. Br.Recog.7. *Uncore ſi liſſue in taile infeoffe eſtr.ore execution ſerra vers le feoffee,* 19.E.3. Fitz.Reſceipt.112. Plo.357.b.

Mes ſi tenant in taile conuſt ſtatute, ou recogniſanee, & apres alien, le terre in mains le feoffee ou alienee ſerra ſubject al eſt ſtatute ou recogniſance. Co.1.62.& 2.52. 8.H.7.8.

Coppihold

Coppihold terres, ne ſont liable, ne ſerra extend ſur ſtatute ou recogniſance, &c.

Leaſe ou terme pur vie, ſerra extend, per annal. value, de ſatisfie le debt. Mes le vic. ne pt. vender ceo per debt.

Nota que ſes judgment in bre. de debt le plaintiff recovera ne avera execution de ut terrs, mes tiels ters qx. le deff. avoit jour de judgement rendie: & de chattells, il avera execution ſolemt. de ceux q. le deff. avoit jour de execution ſue t'mes dl ley tit. execution & viel Na. bre. 165. 2. H. 4. 14. Br. 23. Co. 1. 102. a. Finch. 471.

Leaſe ou terme pur ans, & touts auter biens & chattells del conuſor ou debtor ſont liable, & ſerra extend, ſc. *(in debt ou ſur ſtat.) tiels queux le Debtor, ou conuſor ad in ſon poſſeſſion demeſne, & a ſon uſe demeſne, al temps ou jour del execution ſue, ou agarde. Mes ſale de chattells,* bona fide, *apres judgment, & devant execution agard' eſt bon (ſed nemy apres execution agard) come appiertin* 2. H. 4 f. 14. per cur. 11. H 4. f. 7. & 9. H. 6 58. & Co. 8. 171. & N. bre. 165.

2. H. 4 f. Execute 24. Kiel. 87.

Vuc. per Babbington 7. H 6 Br. Execution 116. *Si home ſoit condemne in det, ou oblige in un ſtat. les biens queux il ad jour del judgment, ou conuſance del recogniſance ſerra lie al execution, in quecunque mains que ils viendera,* quod non fuit negatum: & Co. 7. 39. 2. *Chaſcun execution, in judgment del ley, ad relation & retroſpect al judgment.* See hic c. 29.

Mes un fraudelent conveyance, ou done de terre, ou biens, ne avoider aſcun execution, vide *les ſtatutes* 50. E. 3. c 6. 1. R. 2. c. 9. 2. R. 2. ſtat. 2. c. 3. 3. H. 7. c. 4. 13. Eliz. c. 5. & 7. & *les livers.* 43. E. 3. f. 3, Dyer 295. & Co. 3. 81, 82, 83.

Terres in auncient demeſne ſone liable al ſtatute & poent eſtre miſe in execution ſur ceo. vide F. Execution 118. & 7. H. 7. 10. Br. Anne. dee. 37. m. Fitz. Retorne 109. contra, & Dyer 373. vide Co. 4. 67. & 5. 105.

Terres, ou biens, tenus jointment per le connſor oveſque eſtranger, & le connuſor eſt condemn in damages & moruſt devant execution, ceux terres ou biens veignans a le eſtranger per ſur vivor, ne ſont extendable, Br. Execut. 116 & 148. & Fitz. Execution 113.

13. H. 7. 22. a.

Terres la feme ſont extendable durant le coverture, per det le baron, 15. H. 7. fol. 14.

Rent poit eſtre deliver in exec. Fitz. Avowrie, 237. Exec. 63.

Rent extinct per releaſe del partie, poit eſtre extend; Co. 7. 38, 39.

Come ſi home ad judgment a recover det, ou damages, per ceo le rent que il ad daſcun eſtate de franktenement eſt liable a ceo, & pur ceo coment que apres judgment ceo ſoit releaſe, &c. *uncore ceo poit eſte extend.*

Mes home navera unques un choſe extend ſur un execution ſinon que il poit graunt & aſſigne meſme le choſe, per Shelly 28. H. 8. f. 7.

Et pur ceo un annuitye ne poit eſtre deliver in execution, Doct. & St. f. 53.

Iſſint les profits del office, ou auter choſe que ne poit eſtre graunt ou aſſigne ouſtre, ne ſerra extend, Dyer f. 7.

Biens

Biens demise pawned sive pledged, ne poient estre prise in execution, pur son det que demise ou pawne eux durant le temps ou terme, que ils sont issint demise ou pawne, vide 22.Ed.4.fol.10 34.H 8.Br.Pledg.28.

Come si home (bona fide) *lessa son barbits (ou oxen pur ans)* &c. *ou sil baile ses biens in pledge & apres serra condemn in personal actions, la tiel barbits ou biens ne serra prise & mise in execution, tanque le lease soit determine, ou le money pay pur le pledge,* Br.Distr.75. 4.Ed.6

Issint semble de biens que sont distrain pur just cause (come pur rent, amerciament, damage fesant, & viels) & sont impound, ils sont ore in custodia legis, & tam diu *que ils sont issint, ils ne poit estre prise in execution,* See Br.Pledges 28.Finch.11.

Det ou damages recover vers un cominualty, nul execution serra fait mes tantum del biens queux ils ont in common, Fitz. Execution 128.

Si le consor infeoffe le roy, ceo ter. est discharge del ex cut'. Fitz. 266.

Issint touts auters terres del Roy sont exempts des distresses, & des executions, Plo 242.b.

Si pluſors homes soient severalment seisie de terre, & ils touts joyne in un recognisance (statute merchant, ou statute staple) in cest case le conuser ne poit extend le terre al aſcun des consors solement, mes touts les consors doivent owelment estre charge, & lun de ux solement ne portera tout le burden, pur ceo que sont touts in owell degree: Et in executions queux concerne le realty & charge le terre, le vicount ne poit faire execution del terre lun solement. Co.3.13.a.14

Lun le consor ad alien part de son terre, uncore le consor meſme, al voluntat del consusee, poit estre solement charge, pur ceo que il est meſme le person que fuit le detter, & que fuit lye, & pur ceo il & ses terres poit estre solement charge. Co.3.14. Br.Suit 10.12

Issint le heire del consor (ou de cestuy vers que judgment est done in det) poit estre solement charge; uncore in aſcun cases le heire del consor avera contribution vers le feoffes son pere, &c. See Br.Suit.12. *mes* Co.3.12. *semble contr'* &c. *que le heire navera contribution vers aſcun purchaſor, coment que* in rei veritate *le purchaſor vient al terre ſans aſcun valuable consideration* &c. *car coment in le case dun recognisance, statute ou judgement, le heire est charge come terre tenant, & nemy come heire (& le reason del ceo est pur ceo que per le recognisance, ou statute le heire nest lye, mes le consor* concedit, quod dicta pecuniæ ſumm. de terris, &c. levetur) *uncore il navera contribution vers un purchaſor.* Co.3.12. Br.Suit 12.

Vide *le liver* 17.E.2. Br.Suit 13. & Fitz. Execution 139. *que eye lunge que le heire ad aſſets execution ſerra vers le heire tantum; mes ſi le heire nad aſſets, execution ſerra ſur touts les terre tenants, & cheſcun ſerra contributory al auter: mes ou execution eſt ſue vers le heire, que ad aſſets il navera contribution vers le terre tenants ne feoffees.*

Mes quant le terre diſcend al divers heires (ou files) lun heire ſolement ne ſerra charge, mes touts les heires enſemble ſerra charge, autrement un heire avera contribution vers lauter heire, car ils ſont in æquali jure. Co. 3.12,13.

Si

Br. Suit. 10, 12. *Et quant al purchaſor de tiels terres, coment lour dits terres apres le judgment, recogniſance, ou ſtatute, ſoit ſubject al execution, uncore tiels purchaſors ont greinder priviledges donc al eux (per le ley) que le conuſor meſme, ou ſon heire, ont: iſſint que ſi le terres de un purchaſor ſoit ſolement extend pur lentier det, tiel purchaſor avera contribution vers touts auters de les purchaſors, & vers le conuſor, vel ſon heire, mes nota que per eſt parol, contribution, n'eſt deſte intend que les auters doners ou allow a luy aſcun choſe per voy de contribution, mes doit eſtre intend, que le purchaſor (on party) que ad ſon terres ſolement extend pur tout poit per* Audita querela, *ou* Seire facias *(come le caſe require) defeater le execution, & per ceo ſerra reſtore a touts les mean profits, & chaſer le conuſee de ſuer execution de tout le terre, iſſint que in ceſt manner cheſcun ſerra contributory, cco eſt, le terre de cheſcun terre tenant ſerra ovelment extend.* Co. 3. 14.

Mes ſi le conuſor infeoffe le conuſee del parcel del terre, & un eſtranger de auter parcel, & reſerve parcell in ſes maines, ore conuſee navera execution vers leſtranger (ou ajcun auter feffees) mes uncore vers le conuſor, le conuſee avera execution del parcel que remain in ſon main.

Fitz. 246 b. *Si le conuſor dun ſtatute marchant, ou ſtaple,* &c. *ſoit priſe, & moruſt in exec. uncore le conuſee avera novel execution de ſes terres & biens.* Do. 5. 86 87 vide Fitz. 246. b. St 21. Ja c. 24.

Co. 5. 86. *Si le conuſor ſur ſtatute &c. ſoit priſe in execution & eſcape, uncore ſes biens et terres ſur meſme ſtatute ne ſont eſtre extend; car l'eſcape, et lachim que le plaintiff advers le viſcount pur l'eſcape, n'eſt ſatisfaction del det.*

Vide plus hic poſtea Execution *ſur* Capias ad ſatisfaciendum.

11. H. 6 *Si le conuſor,* &c. *eſteant in execution procura* Corpus cum cauſa, *de remover ſon corps, et ſua* Scire facias *vers le conuſee,* &c. *a defeat un execution ſur un ſtat. il primerm't trova ſureties al Roy, & al party plaintiff de yeald ſon corps, ou de ſatisfier luy ſon det ou duety, incaſe que de maters emproſe in ſon* Scire facias *ne ſoit trove & adjudge pur le conuſor. ſtat.* 11. Hen. 6. cap. 10.

3. Jac. *Auxy per le ſtatute* 3. Jac. c. 8. *nul execution ſerra ſtay, ou delay, per brief de error ou* Superſedeas, *pur reverſing daſcun judgment in aſcun action de det, ſinon que le party (que ſua tiel brief de error) ove ſque 2. ſuffic. ſureties ſoit primerm't lye al party pur que tiel judgment eſt done, de proſecute le dit brief de error cum effectuz ac de payer touts le dets, damages, & coſts,* &c. *ſi le judgment ſoit affirme, ac etiam coſts & damages pur tiel delay.*

2. H. 5. c. 2. Fitz. 251. c. *Et pur ceo ſi home ſoit condemn in aſcun court, & ſon corps miſe in execution, & puis il procure un brief de* Corpus cum cauſa *ou* Certiorari, *deſtre direct al vicount de remove ſon corps,* &c. *icy le vicount ſur le dit brief, doit return le verity,* &c. *que ſon priſoner eſt condempne per judgement done envers luy &c. ſur que le priſoner ſerr' maintenant remaund al priſon, la a demurrer quouſque il ad ſatisfie le plaintiff.*

Fitz. Execution. 21. & 88. acc. *Si ſtatute ſoit acknowledge al deux, & lun de eux purchaſe apres terres del conuſor, donque ſemble que le dit ſtatute ad perde ſon force vers ambideux.* vide le Regiſter 147. Purchaſe parcell.

Si execution ſoit ſue del corps, & del terre, & puis le conuſor infeoffe le conuſee del terre, ou ſurrender parcell diſcend a luy, in touts ceux caſes le corps ſerra diſcharge, car per diſcharge del part del choſe in execution tout eſt diſcharge. Plow. 72. b.

Si home ſoit lye in 2. ſtatutes, lun apres lauter, & le darreine ſtat. eſt primerment extend & deliver in execution, & puis le primer ſtat. eſt miſe in * execution pur greinder temps, & pur greinder ſumme, uncore quant le primer ſtatute eſt ſatisfie, le ſecond conuſee avera le terre arere per force del primer extent. Co. 4. 66. vide Fitz. Execution 250.

* Nota le primer conuſee poit aver Scire fac' & execution ſur ceo

Quant le extent (ſur ſtatute) eſt ſatisfie & incurre per effluxion de temps, le conuſor poit enter arere. Co. 4. 67. ibid.

Mes quant lextent eſt ſatisfie per caſual profit, le conuſor coviet de aver Scire facias &c.

Defeſans al ſtatute, fait apres execution, eſt bone, & defeatur cybien le ſtatute, come le execution ſur ceo. Co. 6. 13.

Le ſtatute de Mercatoribus, lye touts le terres le conuſor al execut' & voet que ſerra deliver al conuſee ſur reaſonable extent, mes ne parle que ſerra deliver al extender, ſi ils eux extend trope haut; & unc' ſerr' deliver al extender, per le equity del ſtatute de Acton Burnell fait devant, que parle que biens preiſes trope haut ſerra deliver al preiſors, &c. Plow 82. b. & 127. a. & 205. b. Co. L. 290.

Biens auſter preiſe,

Mes nota ou le ſtatutes de Acton Burnel &c. eſt que ſi les preiſors del biens le conuſor (ſc. les Jurors) preiſe eux trope haut (in favour del dettor, & al damage del creditor) les choſes iſſint preiſe ſerra deliver al preiſors per meſme price & ils render le creditor ſon det, ceux ſtatutes ſont penall & ne extender al aſcun auter briefs de execution forſque ſur le ſtatute merc, haut, ou ſtaple, & ſur de Recog. Quere Co. L. 290, recogniſance. Et pur ceo ſur briefe de Elegit ou auter brief de execution ſur judgement, ſi les extenders (ou preiſors priſe les terres, ou biens, trope haut, le plaintife (ſc. le creditor) nad remedie. Benl. 4. P. & M. Quære ſi Reextent ne giſt. Et vide Stat. 32. H. 8. cap. 5. & Co. L. 289. b. 290. le dit. Stat. bien Expound.

Nota quant les terres ou biens ſont liver al extendors, ils maintenant reſponder al creditor, de ſon det, per les parols del ſtat. & uncore ils ne payer le argent tonque a les jours aſſiſe & limit in lextent. Plo. 205. b.

Si le dettor complaine que ſes biens ou terres fuer' vend, ou deliver al conuſee, al trope petit value, uncore il nad remedy par le Comon ley, (ſtatute de Acton Burnell) car in tiel caſes le debtor poet pay le money, & recovera ſes terres, ou biens, 15 H. 7. 15. Et auxy ſemble que navera remedy in Chancery, Eo que L'xtent fait per Ser. dl Jury, eſpecialmt ſi ne fuit fait per Govin: Mr: ſerra intend que fuit Extend reaſonablemt, intant que les Extendors ſont jurus, C. autremt. cheſcun verdit poet eſtre Examin in Court dl Chancery. Cromp. Author. des Courts 55.

Nota ſi le extendors ont extend les terres ou biens a trope haut, uncore ſi le vicount ſur lextent liver eux al creditor, & le creditor priſt eux ſolonque le extent, ou ſil ne vient in court meſme le terme que le vic' fait ſon return, & pria que ſont deliver al extenders, il navera remedy apres. Regiſter. 146. b.

Et

Et pur ceo le party bien refuſe terre extend trope haut ſur ſtatute, autrement ſerra conclude a preyer que lextenders les ayent. Fitz. extent. 11.

Auxy le party bien refuſe quia le vicount ne voil luy liver forſque parcel del terre le conuſor; car ſil accept ceo, il ſerra conclude a demand tout apres. Fitz. Execution. 84. & 86.

Comt. le vic. luy demeaſn. in le Extent ſur ſtat. ou Elegit. vide plus hic poſtea, *retorne de Elegit, & retorne de Extent.*

CAP. 27.

Execution ſur Recognaiſance.

Recogniſance, eſt obligation de record, acknowledge in aſcun court de record, ou devant aſcun Judge, ou auter officer, ayant authority de prender ceo, come devant les Judges del banco Regis, vel del common Plees, les Barons del Eſchequer, les Maſters del chancery (ſeient il. in ordinary, ou extraordinary) & les Juſtices de peace, &c. Et ceux que ſont meere Recogniſances, ne ſont ſeale, mes ſont inroll; Et aſcun foits ſont ſeale, ou le ſeale del party: Et poient eſtre ove condition annex, ou poet eſtre ſingle, & donque de ever Indentures de defeaſants, faits apres. Br. Recog. 11. 14. & 19. Recogniſance quid.

Cheſcun de Chief Juſtices, vel en lour abſence hors del termes, le Majors del ſtaple de Weſtm. ove le Record. de London. pot. prender Recog. & ſa execute en tots reſpects come eſtat. ſtaple. 23. H 8. c. 6.

Auxy le Roy poit per ſon commiſſion doner authority al aſcun home de receiver conuſance de auter home, & de returne in ceo le chancery; Et per vertue de tiel commiſſion, ſi home conuſt devant commiſſioner, aſcun det al auter, deſtre pay a luy a certain jour, &c. & ceo certifie in le chancery, ove le commiſſion, &c. ore ſur ceo certificate fait del ceſt conuſance, ſil ne paya le det al jour, il avera elegit ſur ceſt recogniſance iſſint priſe, cybien come ſil fuit priſe in le Chancery. Vide Fitz. 267. a. Regiſt. 300.

Roy meſme ne poet prender Recog. mes doit aver Judges ou Commiſſioners de ſouth luy de ceo prender. Br. Recog. 14. & 19.

Le Court de Parliament ſcant, poet prender Recog. Br. Recog. 8.

Eadem lex de Sig. Chancellor de Angliter, ou Sig. Keeper del grand ſeale. 1. H. 7. fol. 20. q. *il poet prender Recog.* Tamen Dyer 220. pl. 14. ſemble contra.

Les Juſtices del banco pot. prender & Recorder Recog. cybien extra Terminum, come infra terminum, & cybien in aſcun County de Angliter, come al Weſtm. ou in Curia. Br. Recog. 20. vide.

Cheſcun Judge de Record, & ch. Juſtice ou Commiſſioner de peace, que ad authority de ſeer in Juſtice per le bien publique, pt. prender Recog. Mes conſervat. del peace que eſt per le Cuſtome de Realm (come Conſtabl., &c.) il. ne pot. prender Recog. Br. Recog. 8. 14.

Auxi Juſtices de peace que ſont per ſtatute, ou per Charter, poient prender Recog. pro Pace.

Ch ſcun vicount del County eſt principal Conſervator del peace, per le Comon ley, & pt. prender Recog. Vide hic c. 4.

Le Chancellor de Court de Augmentations poiet prender Recog. del receivers, farmers, bayliffs, & anters Accomptants la, & tiel Recog. de quncunque ſumme ſoit priſe, ſa bon. 27. H. 8. c. 27.

Les Knights del Parliament, & les Citizens & Burgeſſes, elect pur le Parliament, poient appointer Collectors per les Diſmes & Quinzimes, & ſur lour Nomination & Election de tiel Collectors, pot. prender Recog. del eux (al uſe le Roy) a eſtre indorſe ove Condition de payer tiel ſummes que il Collector, &c. *Et il. certifier tiel Recog. in le Eſchequer; vide les ſtats. faits per le grt. del tenths & fifteens.*

Iſſint les Commiſſioners pur le ſubſidy poient appoint Collectors del ſubſidy, & pot. prender Recog. de eux, &c. ibid.

Coroners ſur lour Enquiry ſuper viſum corporis, &c. *pot. prender Recog. de tiels queux poient doner evidence,* &c. *per lour appearance al prochein general gaol delivery, per deliver lour knowledg la concernment le mort,* &c. 1. & 2. Ph. & M. c. 13.

Qt. home conuſt debt en Court de Record (ou tiel) ſoit al Roy, ou al comon perſon, eſt le plus hault lien q. pt. ee. & come un judgement (done Scire fac' *cybien come action de debt giſt) & per ceo conus per un eng. ne ſa. avoide freque durt ſa. nonage, per audita quere.* Dyer 232.

Nota que Recog. eſt al common ley.

Sur Recogniſance, la ne iſſera Capias, *in l' orig.* Nec Capias ad ſatisf. *Mes al primes la iſſera un* Scire fac. *returnable in le Chancery; Et ſur le returne del ceo, ils uſe de agarder un* Fieri fac. *ou un* Elegit, *al election del conuſee.* 48. E. 3. f. 14. Br. execution. 129. & Dyer 192. & 306.

Lon un Capias *fuit agard ſur un Recog. Fayrefax move le Court q. il pt. aver ſuperſedeas, & fuit grt. per ceo que* Capias *ne giſt ſur Recog.* 23. H. 7. Keil. 100.

Mes ſi le plt. voile prater un original bre. de debt al Comon ley, vers le conuſor, & conuſor ſur ſon Recog. &c. *la ſi le def. ſoit condemn, un* Capias ad ſatisfac. *giſt, & le corps del conuſor ſa. priſe in execution; C. la le plt. ad wayve le plus ſpeedy remedy, ſc. le* Scire fac' *que eſt fonduc ſur le Record, & ad eſlien l'aut. remedy,* &c. *Mes il navera execution la des ters que le conuſor avoit jeur de Recog. le fait, ſicome il puiſſoit aver in le* Scire fac. *mes des ters tantum que le conuſor avoit die judicii redditi ſur loriginal brief.* Dyer 306

Sur Recog. le conuſee ne poit aver action de det envers le heir, car le recog. eſt, quod tunc vult & concedit, quod dicta pecuniæ ſum. de bonis & catallis, terris & tenementis, &c. levetur; *iſſint que le charge eſt impoſe ſur les biens & terres, iſſint que det ne giſt ſur ceo vers le heire, mes* Scire fac. *giſt vers le heire.* Co. 3. 15.

Uncore ſur recog. acknowledg al uſe le Roy (coment les parols del recog. ſont de bonis & catallis, terris & tenementis, &c. levet.) *le Roy avera liable a ſon execution* 7. H. 4. f. 34

execution, cy bien le corps, come les terres & biens de ſon dettor. See Co. 3. 12. b. & 11. 93. a.

Execution per force del recog. (in caſe de common perſon) ſerra de touts les biens & chattels le conuſor, (except ſes avers del carve. & implements de husbandry) & del moity de ſes terres, & hoc per le ſtat. de Weſtm. 2. cap. 18. Weſtm. 103.

Recog. de tent. in tayle ne lyera le terr. tayle, mes durt vie le conuſor, & non envers liſſue in tayle. 38. aſſ. Br. Recog. 7.

Sur Recog. le creditor preia Elegit del ter. que le conuſor avoit jour del conuſance, ou unques puis, & non negatur mes que il avera; Mes fuit dit la, que ſi le vic. Retorne que le conuſor n'avoit rien jour del Recog. conuſ. mes purchaſe puis, la il avera come eſt preia ſupra, & non ante per luy: Et cum ipſo concordat les ancient Tenures tit. Tenant per Elegit. *Tamen a ceo jour il eſt uſe d'aver de lun & l'aut. al primes.* 24 E. 3. Br. Recog. 4.

Scire fac' vers un que conuſt un Recog. le vic. retorne luy mort, per que iſſiſt garniſhment vers les terr tenants, que fuerant retorne garneis, & ne veigne pas, per que le plt. avera Elegit. 38. E. 3. Br. Recog. 2.

Al. ipſ. Recog. pt. eſtre fue. Vide Br. Recog. 3. & 17. & Fitz. 266. c. 267. b. c. d.

Nota que ſur Recog. le vicount pt. fayre execution de tout le moyety del ters, queux le conuſor avoit al jour del Recog. fait, ou apres: Et le Extent ou valuation del dit moyety des ters, & preiſing des bie. le conuſor ſerra per inquiſition. Et ſil. overvalue eux il. ſa. deliver al preiſors, come in caſe de ſtat. Merchant. Beal. 4. Ph. & Mariæ.

Auxi le Extent del dit moyety des ters, ſerra per meetes & bounds come ſemble.

Auxi ſur recog. le moyety del ters le conuſor, queux ſa. deliver per le vic. al conuſee, ſerra al conuſee, tanque le det ſoit levy per reaſonable price & Extent; de que le conuſee pot. aver aſſiſe, & rediſſeiſin. Finch 101.

Vide per ſtat. 32. H. 8. c. 5. *Recextent done ſur terr. in execution ſur eſtat. merchant, ſtaple, ou Recog. loyalment evict, dcut tout le det & damages ſatisfie.* Vide Co. L. 289. b. 290. *Ce ſtat. bien expound.*

Auxi nota que ceſt parol recogniſance, extend ſovent foits in noſtre livres al ſtatutes merchants, & ſtatutes ſtaple.

CAP. 28.

Execution per Elegit.

An Elegit is a writ judicial, and lieth either for him that hath recovered debt or damages in the Kings Court, or upon a Recognisance *Elegit.*

cognisance in any Court, and must be sued within the year, *Termes del ley.* Finch 101. Co L.289 b. & 290. b.

By force of an Elegit, the Sherif may take in execution, and deliver unto the party (sc. unto the creditor) the one half of all the lands, tenements and rents of the conusor or debtor, at a reasonable extent, and all his goods, and chattels (præter boves & affros de caruca sua) saving only his oxen, and beasts of his plough, until the debt be levied, upon a reasonable price or extent: And this is by force of the Statute of West.2.c.18. which is the first Statute which did subject land to be taken in execution upon a judgement, or upon a recognizance, which is in the nature of a judgement. 13. E. c. 38. Co.3. 12. a.

Auxi sur debt ou damages recover in Court le Roy. le moyety de ters le conu. c. sa. deliver per le vic. sur le Elegit, serra al conuze tang; le debt soit levy,&c. & de cex le conuze pt. aver. Assize & Rediss in. Finch 101. & N. bre.166.

Mes in case de Elegit, le conuse n'avera Damages, costs, no auter chose, mes soleme le terr, tang; le debt soit satisfie. Co.4.67.

This Statute of West.2.c.18. (which giveth this Elegit,) prohibeth, quod vicecomes liberet ei omnia catalla, &c. Et medietatem terræ suæ, quousque debitum fuerit levat per rationabile pretium, & extentum: which last words, pretium, is to be referred to chattels, and extentum to be referred unto lands; Et rationabile pretium & extentum, ought to be found by inquisition and verdict, sc. the appraising of the goods, and the extent or valuation) of the lands, ought to be per sacramentum duodecim proborum & legalium hominum, &c. For the Sherif himself cannot appraise the goods, nor value and extend the lands upon an Elegit: Neither can the Sherif upon an Elegit, deliver any goods in execution, or extend any lands, but only such as are appraised and valued by the Jurors of the Inquisition. Co.4.74. Co. 4. 65. a. & 74. Dyer 100.

Execution per Elegit covient estre per inquisition.

Upon an Elegit or other writ directed and delivered to the Sherif to extend any lands or goods, the Sherif by vertue of the same writ, may charge a Jury to make enquiry according to the same writ: And the Sherif and Jury may go to the house or ground to be extended, or where the goods to be praised do lie, and there may appraise and value the same. See Semaynes case. Co.5.91.

And the Sherif and Jurors may go into the same house or ground (to that purpose) if the doors, or gates be open; but may not break open the gates or doors, &c. ibid. & hic.c.

The words of this Statute of Westm.2.c.18. are thus, Liberent ei medietatem terræ debitoris, *quel per construction del ley est* (medietatem) *de tout que il ad al temps ou jour del judgement done, ou al ascun temps apres.* Fitz.Execution.34.249. vide Co.L.102. Co.7. 39.

Auxy le statute de Westm. 2. c.18. est quod vicecomes liberet medietatem terræ, &c. *& per lequity del ceo, le vic. poit auxy deliver creditor, ou conusee) le moyety des rents.* Br.Elegit 13. (*al* Br. Parliament.102.Plo. 178.

Nota

Nota in veteri libro Intrac. que le bre de Elegit eſt quod liberet medietatem terre, & Tenementorum ſuorum in balliva ſua, et ſic videtur que le dit ſtat. de Weſtm. 2. *debet intelligi de terris et Tenementis, per hoc Verbum ter. tantum, comt. la dit. Stat. ne parle de hoc verbo Tenemento.* Br. Expoſ. 16. Elegit 13.

Auxy per les livers de Intrac. le quart part. dun meaſe poet eſtre Extend per un Elegit, Et uncer meaſe n'eſt ter : Et ſic habetur in uſu de faire Extent. de moyety de Rent et hujuſmodi. Br. ibid.

Le execution per force d'un Elegit ſa fait dl moyety per metas et bounds, et nye per mye et per tout. Vide 31. aſſ. pl.

Sur Damages recover (in treſpaſs, ou waſt) le plaintiff preca Elegit des ters q. le deff. avera jour Enqueſt priſe, ou de brief purchaſe, et fuit deny a luy : Mes des terrs queux il avera jour de Judgmt. rendue luy fuit grt. 42. E. 3. 11. N. bre. 166. & 167. & Fitz. Execut. 249.

Co. 4. 81. *Auxy ceux parols (in le dit ſtatute de* Weſtm. 2.) quouſque debitum fuerit levatum, *ſerra intend,* be or might be levied ; *Car ſi le conuſee, ou tenant per Elegit (ou tenant per ſtatute Merchant, ou ſtaple) neglect a prender les profits, uncore quant le conuſee poit aver eſtre ſatisfie de ſon det ſolonque le extent, le conuſor reavera ſon terre ; mes ſen. ne poit enter in tiel caſe, mes eſt miſe a ſon* Scire facias, &c.

Si tenant per Elegit, &c. ſoit ouſte per un eſtr' la le temps ineurgera, et il eſt miſe a ſon remedy vers le treſpaſſor.

Ibid. *Si tenant per Elegit &c. ſoit interrupt de prender le profits del terre per reaſon del guerre (ſc. que le terre ou profits fuit diſtroy per guerre) uncore ſee, il ne tiendera ouſter, mes ceo ſerra in ſon diſadvantage.* Fitz. Execution 146. & Co. 4. 82. Ou le conuſee, &c. tiendra ouſter,

Co. 4. 82. 15. H. 7. 15. *Mes ſi les profits del terre ſont degaſte per ſurrounder del ewe, ou per wildefire, ou per aſcun auter act de Dieu, ſans default ou negligence del conuſee, la le conuſee (ou tenant per Elegit, &c.) tiender le terre ouſter, ſc. quouſque ſoit ſatisfie de ſon det.* Vide Br. Statute Merchant 41.

Co. 4. 66. 15. H. 7. *Si le conuſee ſoit ouſte per tort, per le conuſor, ou per aſcun auter claymant ſouth luy (pur vie ou ans &c.) le conuſee tiender ouſter,* Co. 4 66.

Iſſint ſi le conuſee ſoit ouſte per garden in chivalry. 15. Hen. 7. 14, 15 Ed. 4. 5.

Si le feme le conuſor recover dower, le conuſee tiender ouſter, ibid.

Si ceſty in reverſion que eſt aver le terre, ouſta le conuſees &c. il ad election, ou de tener ouſter, ou a porter ſon action. Co. 4. 82.

Si

Si les terres deliver in execution (sive stat. Merchant, staple, ou Recog. ou sur recovery de debts ou damages) sont loyalment recover, trist, ou evict del possession del conusee, &c. devant son det & damages soit satisfie, il avera Scire facias, *&c. & sur ceo nous briefe de execution ou Reextent, per levyer le Residue.* Stat. 32. H. 8. cap. 5. & Co. 5. 87. Finch 101. & Co L. 289. 290. vide.

Reextent.

Intrespas le plaintiff recover, & le defendant est prise pur fine le Roy, si le plaintiff prie que le defendant remainer in prison tanque il soit satisfie, (come il poit) icy le plaintiff navera Elegit, pur ceo que il ad prise execution de son corps, & avie: Mes si le party deliver in prison, issint que il nad execution, ore sat sfaction, la il avera Elegit apres, pur ceo que navoit satisfaction selonque son primer election; tamen quære, *de ceo darreine case.* Co. 5. 87.

Mes apres satisfacti n fac, le conusor, in case de Elegit, poet enter a-rer, car le conusee navera damages, costs, ne auter chose, mes solement le terre tanque le det soit satisfie, & pur ceo que tant est certain, le conusor apres lextent expire poet enter.

Cost & damages.

Nota tamen que sur execution sur statute Merchant, ou statute staple, le conusee avera ses damages & costs, ou son det, come poet per le stat. de Acton burnel. & de Mercatoribus 13 E. 1 & per le statute 27. E. 3 cap. 9. & pur ceo in tiel case, scilicet, le conusee navera entry, apres lextent expire, mes doit aver Scire facias. *&c.* Vide 15. Hen. 7. 15. & Br. Scire facias 32.

Nota que le conusor avera Scire fac. *deins le terme del extent, in aſcun cases, & issint ravera son terre; Come.*

Si le conusor voile giser les deniers in court, deins le terme.

Ou si le conusee soit satisfie deins le term, per easu al profit. 15. H. 7. 18.

Ou si le conusor obtain acquitance, ou release del conusee.

Vide plus *mes del ley* tit. Elegit.

Cest statute de Westm. 2. cap. 18. *que dit ne le Elegit ne extend al Copihold terres: Car serra prejudiciall al seignior, & encounter le custome del mannor, que cesti navera interest in le terre tenus per copie, ou per le custome, ceo ne poet estre transferre al aſcun sans Surrender, &c.* Co. 3. 9.

Copihold.

Auxi terr. in Ass. Dem sne & rent issuant hors del, &c. pt. ee. deliver in execution per force d'un Elegit. hic c. 26. & Co 5. 105.

Ters del evesque pt. ee. mise in Execution ses Elegit. Fitz. Execution, 159. & Br. Elegit. 23. (*mes br. Elegit 8. contra.*)

Iſſt. ters q. baron addurt l. covert. pt. ee. mise in execution. ibid.

Ters d. ant' ad a mon use pt. estre mise in execution. Br. Execution 72. Elegit. 11.

In

In det vers le heir ſes oblig. ſon pere, q pled ric. per diſcent & trova contra luy, per que le plt. avoid Elegit dl moyety, cybien de ſon terr purchaſe, come de ſon terr per Diſcent, ratione de faux plee. Br. Elegit. 24.

Mes ſi le heir ad eſtree condemn ſe. Nihil dicit, le plt. avera execution per Elegit freq. dl ters diſcend in fee, & queux il ad jour dl bre. purchaſe Dyer 81.

Co. 4.74. *Terme pur ans ne poet eſtre extend per le vic. ſur* Elegit. *ſans trover le commencement & certenty del terme, per inquiſition: Cor execution per Elegit covient eſte per inquiſition* (ut ſupra) *& ſi ſoit trove per le inquiſition que le dettor fuit poſſeſſe de certain terre* pro termino quorundam annorum ad tunc ventur. *cel inquiſition eſt inſuffieient car covient trover le certentie, & le reaſon eſt pur ceo pue apres le det ſatisfie le partie eſt de reaver ſon terme ſi aſcun part de ceo remain; quel certainty del terme covient appear ſur le retorne del vicount: come ſemble.*

Co. 4.73. *Mes ſur* Fieri facias *le vicount poet vender le leaſe ou terme ſans reciter aſcun certainty* ſc. *le vic' poet recit' que le dettor ad un terme de tiel choſe* pro termin. diverſor. annor. ad tunc ventur. *& que il vend ceo per force dun* Fieri fac. *al* I. S. *&c. & ceo eſt bon. Iſſint ſi le vic. vend tout l'intereſt que le dettor ad in le terre, ceo eſt bon,* (nient ob. miſrecital) *car per common intendment le vic. ne poet aver preciſe conuſance del certeinty del commencement, & certainty del fine del terme: Mes ſil impriſe a reciter le terme & miſpriſe ceo* (reciting ceo fauxement) *& vend meſme le terme, ce. ſale eſt void, pur ceo rue neſt aſcun tiel leaſe ou terme; uncore faux recital nient obſtant, ſi le vic. vend auxy touts l'entereſt que le dettor ad in le dit terre ceo ſale eſt bone.*

Auxy le vic. ne beſoigne de mention aſcun certainty del terme in ſon retorn de Fieri facias, *mes generalment,* quod Fieri fecit de bonis & catallis, *&c.*

Nota que eſt al election del vic. de extender, ou de vender, un leaſe ou terme, tam diu que ceſt remaine in les maiens del dettor ſc. *le vic.* (*a ſon election poet vender ceo tout ouſterment; ou il poet extend & deliver ceo al conuſee a certain annual value* (come de franktenement) *Et la le conuſee a que le terme eſt deliver ad un propertie, le quel eſt incertaine, & le leſſee,* (*ou conuſor*) *meſme ad auter property, iſſint que ſur le payment del det, ou ſur le det receive del revenue del ceo per le conuſee, le conuſor reavera ſon terme.* Plo. 5. 24. vide Co. 8. 171. & 31. Aſſ. p. 6 38. Aſſ. p. 4. & 44 E. 3. 16.

Nota icy diverſity le ſale (*per le vic.*) *dun terme, Et un extent dun terme: Et que ſur ſale dun terme per le vic. le party nad remedy daver ſon terme arere* (*ſi aſcun remaine*) *apres le det ſatisfie, come ſemble.*

Nota que ceſt parol Extendere (*ou Anglice,* Extend) *in nr'e ley, ſignifie Extendere de value le terres ou tenements de ceſtuy que eſt lye per ſtatute, ou recog, &c. quid.* (*& ad forfeit ſon recog.*) *& a delivers eux al conuſee a tiel indifferent rate, que per le annual rent, le creditor ou conuſee poit in temps deſtre pay ſon det.* Co. 4. 67.

Auxy ce parol extent (Extentum) *ad deux ſignificac. aſc. foits ceſt ſignifie le br'e ou commiſſion al vic. pur le valuing del terres ou tenem'ts; & aſcun foits lacti del vic. ſur tiel briefe.*

Nota que apres Elegit, home n'avera Capias ad ſatisfaciendum, en tant q. le brc. eſt Elegit Executionem, que tots foits eſt file ſur le Roll, iſſint q. le awarding di ceo eſt de Record; Mes ceo ſerra intend' quant le vic. ad Retorne le Elegit ſervie, la nul Capias gt. apres: Mes ſi le vic. retorne Nihil, ore le party avera Capias; Iſſint ou le vic. retorne que il ad extend le ter di deff. mes ne poet deliver ceo al plaint. intant que un auter ad ceo in Extent devant C. (ſur le matter) ceo eſt retorne Nihil, entant q. le ter neſt deliver al plaint. per Wray Ch. Juſtice. 30. Eliz.

CAP. 29.

Execution ſur Capias ad Satisfaciendum.

Capias ad ſatisfac.

A Capias ad ſatisfaciendum, is a writ of Execution after Judgement, lying, onely where a man recovereth in an action perſonal any debt or damages in the Kings Court; there the recoverer ſhall or may have this writ to the Sheriff, commanding him that he take the body of the party againſt whom the debt or damages is recovered, and him to keep in priſon untill ſatisfaction or gree be made to the plaintiff, &c.

And thereupon the Sheriff muſt arreſt the party, and put him in priſon, and there to keep him without bail or mainprize, until he hath paid or agreed for the debt and the damages. Dr. & St. 18.

Nota q. nul Capias ad Satisfac. *ſc. al common ley (ſes judgments per debt ou damages) mes tantum qt. le original action ſc. quare vi & armis,* &c.

Mes le Capias ad ſatisfac. *eſt done per late ſtat. de q.* Vide Co. 3. 11. &c.

Et doit ee. ſue deins l'an & jour apres le judgmt. &c. Co. L. 190: b.

Auxi nota ſi Capias ad ſatisfac. *ſoit agard, meſq; le def. ne ſoit trove, le pl. ne poet aver auter execution* 20. E 2. Fitz. Execution 132.

And this Capias ad ſatisfaciendum, is onely againſt the body, which being thereupon taken, the Sheriff muſt be ſure to keep ſafe, or elſe he may perhaps pay the debt himſelf. And therefore if the Sheriff ſhall take a man upon a Capias ad ſatisfac. to him directed, (or ſhall have any priſoner to him committed for debt upon any execution, &c.) and he after ſhall let the priſoner to go at liberty before the debt be ſatisfied, &c. The creditor may either have his action of debt againſt the Sheriff, and ſhall ſo recover, his debt: or the creditor may have his action of the Caſe againſt the Sheriff. 21. H. 7. 13. a. Fitz. 93. a. c.

Eſcape per conſent.

And if the priſoner do eſcape after that he is once in execution, if the eſcape be with the leave and conſent of the Sheriff, or his Undersheriff, or Bailif, Gaoler, or other officer, deputy, or ſervant, then the Sheriff hath ſmall remedy, or none at all: See Plow. 36. a. & Dyer 278. Co. 3 52.

And

And yet one being in execution is ſuffered by the Sheriff to go at large for a time, by the conſent and agreement of the plaintiff and after the priſoner retorneth again, it ſeemeth that he is in execution again, and that ſuch his going at large was no eſcape. See Dyer 275.

But if the priſoner do eſcape of his own wrong (againſt the will of the Officer) although he eſcape and get out of ſight or into another County where the Sherif or Officers hath no authority, yet if freſh ſuit be made, and he be taken again upon the freſh ſuit, he ſhall be ſaid to be ſtill in execution: Coke 3. 52. vide 13. H. 7. f. 1. *Sans conſent.* *Freſh ſuit.*

Co. 3. 44. 52. L 5 E. 4. 12. Br. Fauximpr. 18.

Yea if the priſoner do eſcape againſt the will, and without the conſent of the Sherif or Officer, then the Sherif or his Officer may take him again, where, or whenſoever he can find him (by vertue of the ſame writ before the return thereof) although it be in another County or Shire; And if that the priſoner which ſo eſcaped be followed with freſh ſuit, and taken again, before any action be brought by the plaintif againſt the Sherif for the eſcape, it ſhall be adjudged no eſcape.

And if the plaintif hath brought his action againſt the Sherif for the eſcape, before that the Sherif hath taken the priſoner again: Or if upon the eſcape, the Sherif or his Officers did not make freſh ſuit after the priſoner, yet in both theſe caſes (if the eſcape were againſt the will of the officer) the Sherif may take ſuch priſoner again, and keep his body in cuſtody, until the priſoner hath made his agreement with the Sherif: Or otherwiſe the Sherif may have his action upon the caſe againſt ſuch priſoner for ſuch his wrongful eſcape (if the priſoner that ſo eſcaped be able to make him ſatisfaction:) and the priſoner in theſe caſes ſhall not be relieved, becauſe the eſcape was of his own wrong, and without the conſent of the Sherif or officer.

Co. 3. 52.

Fitz. 95. c. & 130 b.

Iſſint ſi home in execution eſcape, & gaoler luy repriſt, il demurr. in execution per le party arere, ſi le party voile, ces eſcape eſt ſon tort demeſne, & nul perunder benefite de ſon tort dee. 13. H. 7. 1. & Finch. 12.

Nota que ſi un ſoit in execution ſur erronius judgment, & puis eſcape, le vic. ne prender advantage de eeo error, mes ſerra charge pur leſcape: Mes ſi le erronious judgment ſoit reverſe (per briefe de error) doncque le vic. neſt chargeable pur leſcape, car la il poet plead nul tiel Record. Co. 8. 142.

Si unin execution ſur Capias ad ſatisfac. *(ou ſes ſtat Merchant, ou ſtaple) ſoit deliver hors dl priſon (& iſſint hors dl execution) per bre. de Privilege dl Parliament, ad eſtre tenus q. il pt. eſtre priſe apres in execution arere, & q. le vic. ne fait chargeable pre tl. delivery dl priſoner.* Dyer 60. *Mes de avoid. tot ambiguity, le ſtat. de* 1. Ja. c. 13. *ad ore done novel execution vers le detter, & auxi diſcharge al vic.* &c. *per tiel delivery dl priſoner.*

Co. 5. 87.

Si conuſor dun ſtatute Merchant ou ſtaple, eſt priſe & moruſt in execution, uncore le conuſee avera exec. de ſes biens & terres, Co. 5. 87. vide ſtat. 21. Ja. c. 24.

Conuſor ſur ſtatute eſt priſe & eſcape, uncore es biens & terres, ſur meſme ſtatute, poient eſtre extend.

Car coment que per ley, unica tantum fiat executio, *&c. ceo eſt deſtre intend dun execution ove ſatisfaction.*

Et nota que la eſt diverſity inter un execution que eſt valuable, come de terres, ou biens, & execution que neſt valuable, come del corps. Ibid.

Auxy la eſt diverſity inter un execution finall, per que le party eſt ſatisfie (come lou le vic. levy les deniers del biens del defendant, ou extend ſes terres, & deliver eux al Plaintiff, icy le Plaintiff accepting ceo in ſatisfaction, il ad le fine de ſon ſuit) & inter execution ove un quouſque &c. & que neſt final, come ou le corps eſt priſe in execution ſur Capias ad ſatisfaciend. &c. *limitent de que eſt tantum que le defendant ſatisfier le Plaintiff, Et ſon impriſonment neſt abſolute, mes quouſque le def. ſatisfie le Plaintiff.* Co. 5. 87.

Ou 2. homes ſont condempnes in bet, & lun eſt priſe & mys in execution, uncore lauter poet loyalment eſtre priſe in exec. Co. 5. 86.

Iſſint ſi deux ſont oblige joyntment & ſeveralment in un obligation, Et lun eſt ſue, condempne, & priſe in execution, uncore lauter auxy poet eſtre ſue & priſe in execution, tanq; le Plaintiff ſoit ſatisfie in fait de ſon entier det. Co. 5. 86.

Si home ad judgment in action de debt, & puis le judgment utlage le defendant, icy ſi le def. ſoit priſe per Capias utlagatum *al ſuit le Roy, il ſerra in execution pur le Plaint. ſil voet.* Co. 5. 88.

Auxy in touts caſes quant le Plaintiff poet aver Capias ad ſatisfac. *& le def. eſt priſe per* Capias pro fine, *la le def. eſt in execution maintenant, ſi le Plaintiff voet, ſans aſcun preir del party.* Co. ibid.

Et in tiel caſes ſi le vic. ſuffer tiel priſoner daller alarge, ceo ſemble deſte eſcape, & que per ceo le vicount eſt ſubject de payer le Plaintiff ſon debt. Fitz. 281. p.

Et vue vide Dyer 306. *Ou home avoit judgment d'aver execution per default, ſes ſecond* Scire fac' *retorne nihil ſes recog. in* Chancery, *& fuit in execution in le fleet per auters cauſes, & le garden del fleet mre. al Court que le def. fut in execution per certen cauſes. mes ne mre. queux, & ſa. requeſt le Plt. & le Court command le garde del fleet de garder le priſoner per le debt de dit recog. Et apres le garden luy leſſa alarge, le counſee nient ſatisfie, & fuit tenus q. le garden ne fuit per le ley chargeable al counſee, per le dit eſcape; C. le priſoner nefuit unques loyalment in execution al party Plaintiff, per le debt, eo que le execution ne fuit fait ad petitionem petentis, & execution ſa. requeſt le party Plaintiff, neſt execution per le Plaintiff, ces pt. eſtre que il voile eſlier auter execution.*

Eſcape. **If the Sheriff, or any of his officers, do ſuffer any priſoner being in execution, to go at libertie before the debt be ſatisfied, the creditor may recover his debt againſt the Sheriff, as is aforeſaid.** Co. 3. 44. & 8. 100

So if the Sherif, or his officer ſhall ſuffer any ſuch priſoner to go out of priſon, by bail, mainprize, or baſton (ſc. with a keeper, or with the ſervant of the Sherif, Warden, or Gaoler, &c.) before the debt be ſatisfied, or without agreeing with the party, at whoſe ſuit he is in execution, (except it be by the Kings Writ) the Sherif ſhall be anſwerable for the whole debt. For by the Law thoſe which are in execution, ought not to go at liberty within the priſon, much leſs abroad Plo. 360. a.

abroad though with their keeper, or by baſton; but ſuch priſoner ought to be kept in ſalva & arcta cuſtodia; yea the Sherif may keep ſuch as are in execution, in gyves and fetters, to the intent that they may the ſoner pay and ſatisfie their creditors; ſee the Statute made 13. E. 1. c. 11. & 1. R. 2 c. 12. Fitz. 93. c. & 121. a & Dyer 249. And yet ſee Sir Edw. Coke upon Lit. fol. 260. that impriſonment muſt be Cuſtodia, & non pœna; for Carcer ad homines cuſtodiendos, non ad puniendos dari debet. *Priſoner comt ſans demeſne.*

And yet note a difference between the cuſtody of one in execution Co. 3. 44. within the County (or franchiſe) where the common gaol is, or where the office of the Sherif or Bailif extendeth, or reacheth, and where the Sherif or Bailif hath the cuſtody of one in execution, out of their County (or franchiſe) by vertue of an Habeas corpus, &c.

For if the Sherif (or Bailif of franchiſe) ſhall agree that one who is in execution, and under their cuſtody, ſhall go out of the gaol, or at liberty, for a time, and then retorne, although the priſoner retorne at the time, yet this is an eſcape, and the Sherif (or Bailif of franchiſe) ſhall pay the debt.

But where the Sherif, &c. hath one in execution for debt, and a Ha- Co 3. 44. beas corpus cometh to him to have the body in the Kings Bench (at Weſtminſter) at a certain day, and he carrieth his priſoner to London (to an Inn, &c.) and the priſoner of his own head goeth at large, and after cometh again to Sherif, ſo as the Sherif at the day of the retorne of the writ (of Habeas corpus) doth deliver the body in Court, this was adjudged to be no eſcape, for that the commandment of the writ is performed, ſc. to have the body in Court at ſuch a day: and in ſuch caſe the Sherif may go and take what way, or place he ſhall think to be moſt ſure and ſafe for himſelf and to carry his priſoner.

If the Sherif ſhall arreſt one upon a Capias ad ſatisfac. and after the priſoner is reſcued from him, this is an eſcape. and the Sherif is chargable for the debt. Dyer 241. 10. H. 7. Cromp. 207.

If the Sherif ſhall arreſt one upon a Capias ad ſatisfac. and ſhall not retorne the writ, this is an eſcape, and the Sherif is chargeable for the debt, neither may the Sherif arreſt the party again for the ſame cauſe. 4. E. 6. 13. H. 7. 1.

And yet if the Sherif after the execution duely done, ſhall ſatisfie the Plaintif, he needs not to retorne his writ, hic c. 54.

Alſo by the opinions of Coke and Billing. 15. E. 4. Br. Eſcape 11. where a man is in the Sherifs cuſtody upon an execution, if the Sherif ſhall carry his priſoner into another county, the priſoner may have a writ of falſe impriſonment againſt the Sherif, for that it is againſt law, and the Sherif is no Sherif in the other county, and therefore the priſoner ſhall be intended to be out of ward when he is in another county, except it be by the ſpecial commandment of the King or his Chancellor, or other his Juſtices; for in thoſe caſes he ſhall be intended to be ſtil in ward.

And

And yet ſomtimes the act or commandment of the Kings court is no ſufficient warrant to the Sheriff, &c. to ſuffer a priſoner in execution to go at liberty, &c. for there is a caſe reported by Maſter ſerjeant Benlow, Anno 16. El. how that W. Manſer brought an action of debt againſt B. Anſtey warden of the Fleet upon the eſcape of a priſoner there in execution for 154 l. and the defendant pleaded that H. Draycot who was in execution, was before Bailif to the Queen (of her lands late parcel of the Monaſtry of Tuesbury in the County of Staff.) and was found in arrerages, for which he was committed to the Fleet by the Barons of the Exchequer, and after by their commandment, he ſuffered the ſaid Draycot by baſton (under the cuſtody of one of his ſervants) to go into the County of Derby, to gather up his debts, &c. to pay the Queen; and pleaded all in certain, and upon this plea, the Plaintif demurred in Law, and after argument, Judgement was given for the Plaintif. Quod nota. See the like Caſe in Cromp. Author. des Courts, fol. 106. One in the Fleet upon an Execution for the Kings debt (committed out of the Exchequer) was alſo there in Execution at the ſuit of another out of the Kings Bench, and after the Treaſurers and Chancellors of the Exchequer commanded the warden of the Fleet to ſuffer the Priſoner to go with his Keeper into Norfolk to haſten the payment of the Kings debt: whereupon the party at whoſe ſuit the priſoner was there in Execution (out of the Kings Bench) brought his action of Debt againſt the warden of the Fleet (in the Common place) for the eſcape, and yet the priſoner came with his keeper to the Fleet again, and was never out of his cuſtody: and yet it was holden by the opinion of all the Judges of both Benches (tempore Mariæ Reginæ) that the action would lie. 16.E.Rot. 1343.

Another like Caſe you may find in Dyer 297. and there it was adjudged, *Que ſi un ſoit in execution, nul commandement quamvis del Roigne meſm., ſans briefe, eſt ſufficient garrant de diſcharge le Keeper, &c. Et per meſme reaſon ne diſcharger le Vicount.* Vide 7.H.6.fol.5.& 4.E 4.fol.17.

And yet one being in execution within the Cinque Ports, was brought before the Council at London, and that was held no eſcape. Cromp. 214.

Auxy ſi le vic. avera bre. ſouth Signet le Roy, commandt. luy de leſſer un in execution, d'aller hors, que accordt leſſa le priſoner d'aller hors ove baſton, ſemble ceo ne excuſe le vic. vers le party per le Condemnation Dyer 162. vide Fitz. Ret. 89. aut. tiel. Caſe.

Et per omnes Juſtic. de utroque. Banco An. 4. & 5. Ph. & Mariæ, *fuit tenus que un in Executionne ſerra diſmis p. Protect de Servic. Regis, & uncer fuit home very neceſſary per le quer. &c.* Dyer 162.

Auxy vide 13.H 4 17 *Ou le vic. pur executer del commandement le Roy in tortious acts ſerra puniſh & ou nemy.*

Yea ſomtimes the Kings writ under the great Seal, is no ſufficient warrant to the Sheriff to deliver a priſoner, &c. See hic. c. 21.

And yet ſee 14. H. 6. 1. Br. Prerog. 37. that he which is impriſoned (by writ) for a contempt may be diſcharged by the Kings commandment, by word without writing: But Maſter Bro. maketh a Quære of it.

Alſo

Alſo if any knight or Burgeſs of the parliament (or any of their neceſſary attendants) ſhall happen to be taken upon any Execution, during the Seſſion of Parliament, the Sheriff ought to deliver ſuch priſoner, being ſent for by the houſe. Dyer 60. See hic cap. 21.

But if any Officer of the Chancery, or any neceſſary Officer in any other of the Kings Courts ſhall happen to be taken upon an execution, the Sheriff ought not to deliver them upon their Writ of priviledge; for then the party ſhould be without remedy, if the priſoner ſhould be enlarged and ſet at Liberty. Cromp. Author. des Courts 48.

And note that in as much as eſcapes are ſo penal to Sheriffs, Bayliffs of Liberties, and Gaolers, the Judges of the Law have alwaies made a favourable conſtruction as much as the Law will permit, in favour of the Sheriffs, Bailiffs of Liberties, and Gaolers, who are Officers and Miniſters of Juſtice, Co. 3. 44.

Mes ſur eſcape, Det ne giſt vers le heir, Ne vers l' executers; ne er l' offence n'eſt que treſpaſs, quæ moritur cum perſona. Dyer 271. & 322.

Co. 5. 88. *Auxy nota ſi home recover det ou damages vers auter, il poit eſtier a' aver Capias, ou Elegit, mes ſil preſt le Capias, il navera le Elegit apres,* nec e converſo, 15. H. 7. 15. Vide hic antea tit. Elegit.

Nota que ou Capias giſt in proceſs, la apres Judgment Capias ad Satisfaciendum giſt. Co. 3. 12.

Mes le Party navera Capias ad ſatisfac, Mz. ou Capias giſt in le Original. 11. H. 7. 15. Keeble.

Sur Recog. la ne iſſera Capias in lorig. Nec Capias ad ſatisfac. vide hic antea Recog.

Sur Attachment de Priviledgein Treſpaſs Capias ad ſatisfac. fuit agard, per Ritche un des Atturneys del Bank, vers un Kempe, &c. 2. Eliz. Dyer 192. *Sed per luy Quere ſi Capias ad ſatisfac. in Caſu ſuper fuit bien agard, eo que nul Capias, nec proces de utlary giſt ſur le Original, ſc. ſur tiel ſuite de Attachment de Priviledge.*

Nota que cey que recover Det ou damages in Court le Roy p. tiel action lou Capias ad Reſpond. giſt in Proceſs, il deins 1. an. *apres le recovery part aver un Capias ad Satisfac, &c. Mz. ſil ul Capias ad reſt. giſt in le primier action, donque le Plt. n'avera Capias ad ſatisfac. Mz. doit aver un fieri facias, ou un Elegit, deins l'an: Ou un Scire Facias apres le Ann. ou deins le Ann. ſil voile* Dr. & St. 18.

Auxi ſi un preia un Fieri Facias, il pt. apres aver un Capias, & apres l' Capias, il pt. aver le Elegit: Mes ſil preia le Elegit, il n'avera james Capias, ne Fieri fac. O ſil preia Capias, il n'avera apres un Fieri facias: vi de hic c. 28. & 30.

Nota auxy que devant le ſtatute de 25. Ed. 3. c. 17. *un Capias ne giſt in det, Ne le corps del defendant, devant ceſt ſtatute fuit ſubject al execution pur det, (ſinon in caſe le Roy.)*

Sur

Sur Judgment in action de treſpas, Capias ad Satisfac. gt. deins l'an, a prender ſon Corps in execution per ſatisfaction del Damages: mes ceo ne giſt in aſcun real action (come in bre. de dower, ou auter precipe quod reddat) neque a le Common ley, in det, Detinue, ou Accompt; mes in action de treſpas, on tiel. Fitz. Exec. 164. Co. 3. 12. & Finch. 103.

At the common Law, the body of a man, nor his lands, were not liable to an Execution for debt or damages, except only in the Kings caſe, or in ſome other ſpecial caſe, Plow. 441. Co. 3. 11.

Neither was the body of a man ſubject to impriſonment, by the common Law, except in ſome ſpecial caſes.

The body, was firſt ſubject to impriſonment, for debt by theſe ſtatutes.
- 52. H. 3. cap. 23. } Accountants.
- 15. E. 1. cap 11. }
- 13. E. 1. { de Acton burnel } for debt upon a Sta- { de Mercatoribus } tute.
- 25. E. 3. c. 17. for debt upon ſpeciality or contract, ſc. by Capias (upon the original, &c)

The lands, were firſt ſubject to be extended, ſc.
- The moiety by the Stat. 13. E. 1 (Weſtm. 2.) c 18. which Statute giveth the Elegit, and is the firſt Statute which ſubjects the land.
- The whole land by the Statutes of { 13. E. 1. de Merc' / 27. E. 3. c. 9. / 23. H. 8. c. 6.

Levari fac. At the common law, where a common perſon ſued a Recogniſance, or a Judgment, for debt or damages, he had execution in ſuch caſe, only of his goods and chattels, and corne and other preſent profit which grew upon the Land: To which purpoſe the common Law gave to him two ſeveral Writs; the one, a *Levari facias*, by which Writ the Sheriff was commanded, Quod de terris & catallis ipſius A. &c. Levari faciat prædictam pecuniam, &c. ita quod eam habeas in, &c. tali die præfato B. (quærenti) deliberand, &c. The other writ is called a Fieri facias, which was only, de bonis & catallis. Fitz. 101. Co. 3. 11. 12. Finch. 101.

Fieri fac.

So then this writ, de Levari facias, is given by the common Law, (before the Statute of Weſtm. 2. c. 18. which giveth the writ of Elegit, as is aforeſaid) And this Levari facias is only to be executed upon the profits of the lands, (ſc. the corn and graſs growing) and upon the goods: Or the Sheriff may hereupon take the rents payable by the tenants in execution for the debt, and bring them in Court; but he cannot ſeiſe the land and deliver that to the party, by this writ, &c. Plo. 441. a. & Finch. 101. And this ought to be ſued within the year, after the day of payment to be made by the Recog. (or after the Judgment) For after the year, the cogniſee (or plaintiff) is now by the Statute of Weſtm. 2. c. 45. to have a Scire facias, whereby the Sheriff is commanded, that he give knowledge to the defendant, that he appear in the Chancery, or before the Juſtices, at a certain day, there to ſhew what he can ſay, why he ſhould not pay the debt, or damages: And if he being warned, do not come at the day, or do come, and can ſay nothing why execution ought not to be done, then the Sheriff ſhall be commanded to do execution, See Fitz. 266. c. Fitz. 265, 8. Fitz. 265. de

Scire fac.

And

And if the Sheriff, upon the Levari facias, shall return that he hath levied part of the summe (sc. 20. li. part thereof, &c) the which he hath delivered to the party, &c. now upon this return, the party which ought to have the money, may have a Sicut alias levari fac' directed to the Sheriff to levy the residue of the summe, &c. Fitz. 265. h.

In debt, le Execution quant al terr. serra de quecunque ter. que le party avoit jour dl judgment rendue. viel Nat. bre. 163. 42. E. 3. 11. 2. H. 4. 14. & Finch 101.

Mes quant al Chattels (comt. q. soit lease per a.) le execution serra freq. de ceux que le party avoit jour de Execution sue: Issint que si le party vend ses bie. bona fide, apres judgment, & deut. bre. de execution sue, les bie. ne sont liable al Execution. Finch 101. Co. 8. 171.

Touts les bie. queux sont al def. al jour dl Teste dl bre. de Executions sont liable al Execution dl Plt. Et comt. le def. ad vend eux bona fide, vue de vie. poet eux seises in les mains dl vendee per le dit Execution per curiam Mich. 37. Eliz. & Co. 8. 171. *que apres Execution agard, sale de bie comt. bona fide, ne. bon, mes serra liable al Execution.*

Si le baron soit possesse d'un terme per a. in droit sa fee. Sur un Execution vers le baron per ses debt, le vic. pt. vender le terme dur. vie la fee. Et isst. e. dum estate prostat. Merchant. stat. staple, Elegit, wardship (in chivalry) & anters Chattells realls in possession. Vide Co. L. 351. a.

Mes un estate per vie, ou anter greinder estate ne. vendable per le vic. per debt: Sed les terr. sa. extend al un Annual value, de satisfier le debt.

CAP. 30.

Execution per Fieri fac'.

A Fieri facias, is a writ judicial, that lieth for him which hath recovered any debt or damages in the Kings Court, and thereby the Sheriff is commanded to levy the debt or damages of his goods, against whom the recovery was had. *Et gist tots tps. deins l'an & jour.*

This writ of Fieri facias is only against the goods and chattels of a man, sc. Leases for years, &c. corn growing or sowen upon the ground, or moveable goods as cattell, corne in the barne, &c. houshold-stuff, money, plate, apparel, &c. And this writ also ought to be sued within the year after the judgement, &c. Co. 3 12. vide Co. L. 290 b.

But here the Sheriff and his Officers had need to be very careful, how and after what manner they do execute this writ; for if the leases, or goods, which they shall take in execution, be not the defendants own goods, or leases, but the goods of a stranger, although they may or do finde them in the possession of the defendant (which is the best colour in law to prove them to be his, if the defendant notwithstanding

ſtanding his ſale or gift of them, ſhall ſhall uſe them and take the profit and benefit of them) yet if it ſhall fall out and be found upon triall, that ſuch goods and chattels be not the defendants own, then the Sheriff or his Officers which ſhall take ſuch goods in execution, (upon ſuch a Writ) in ſteads of the defendants goods, the Sheriff or Officer ſhall be a treſpaſſer to the right Owner of ſuch goods, and the Sheriff or Officer in ſuch caſe ſhall pay damages to the owner of the goods to the value of the goods ſo taken, and coſts of ſuit; although the officer hath delivered them to the plaintif in execution. Keil. 119.120.

Or if the officer ſhall not deliver ſuch goods to the plaintif in execution, but that the Sherif ſhall return his Writ that he hath taken ſo much goods of the defendants, and that he hath denarios illos parat. ad reddend. to the Plaintif, then is the Sherif at a double miſchief; for although the value of the goods be recovered againſt the Sherif or his officer, by the owner of the goods; yet the plaintif in the action, may within the year after execution done, have a Scire facias upon the judgement and the return made by the Sherif, and thereby ſhall compel the Sherif to bring the money into the Court, and after the year the plaintif may have an action of debt againſt the Sherif for it, if he be not otherwiſe ordered by the Court where the judgment is depending.

And therefore the ſurer courſe for the Sherif in ſuch caſe is either to keep the goods, until the parties be agreed, or elſe to take good ſecurity of the plaintif to defend him and ſave him harmleſs, and to ſtay the returning of his writs until he may be well adviſed what to do therein; But if he take a bond of the plaintif, it is queſtionable whether it be good or no in Law, and not within the compaſs of the Stat. of 23.H.6.c.10. to be taken colore officii.

But the ſafeſt and ſureſt courſe for the Sheriff, or officer, is, to enquire by a Jury in whom the property of the goods is; or elſe not to take in execution, or not to meddle at all with any ſuch goods as ſhall not plainly appear to them, to be the proper goods of the defendant: For it ſeemeth that the officer is bound at his peril, to take knowledge whoſe the goods be, or at leaſt, that they be the proper goods of the defendant: but being found by the Jury, that excuſeth the Sheriff.

Alſo if an officer ſhall arreſt another man who is not the defendant, or ſhall attach goods which are not the propec goods of the defendant, in both theſe caſes the officer is treſpaſſer; And if the plaintif ſhall ſhew unto the officer the man, or goods, and ſhall ſay to the officer, that this is the defendant, or theſe are the goods of the defendant, where they are not, there both the plaintif and the officers are treſpaſſors. See Doct. & Stu. 150.

I. S. Riding upon his Maſters horſe to C. and there one enters a plaint againſt I.S. the ſervant, and attacheth the ſaid horſe. whereupon the Maſter of the ſaid ſervant brought an action of treſpaſs againſt the Bailif which attached the horſe, and had Judgment to recover againſt the Bailif &c. for that the officer is bound to take knowledge, whoſe goods he attacheth. Br. Treſpaſs 99.

Goods pawned or gaged for debt, cannot be taken in execution: Nor goods demiſed, or letten for years: Nor goods diſtrained. Vide br. Pledges 28.

When

When the Sheriff hath taken any cattel in execution, he may put them into a Caſtle, or other place, where he thinks moſt fitting and ſafe to keep them until he can ſell them: or he may keep them himſelf, till he can ſell them.

But upon a Fieri facias, if the Sheriff ſhall levy the money and ſhall keep the ſame ſtill in his hands, the party Plaintif may have his action of Account againſt the Sheriff. And if the Sheriff ſhall returne Fieri feci, ſed non inveni emptores, then a venditioni exponas ſhall go out; *Mes le party plt. navera unques un novel execution.* 13.H.7.f.1.

Upon a Fieri fac. to levy 20 l. the Sheriff returneth Quod fieri fac. 10.l. quas habeo ad diem,&c. at which day he hath not the money, and a new Sheriff is choſen, here the Plaintiff ſhall have a *Scire facias* againſt the old Sheriff, to ſhew why the Plaintif ſhould not have execution of the 10 l. and if the Sheriff cannot diſcharge himſelf, then the Plaintif ſhall have execution againſt the Sheriff by a Fieri fac. or Elegit. 9. E. 4. fol. N. bre. 165.

Vide pluis devant tit. execution per ſtatute ſtaple, & execution per Elegit.

Eſt al election de ceyque recover debt ou damages, de aver execution per Fieri facias, ou per Elegit. 13.E.1.c.18.

Nota que Fieri facias giſt tout foits deins le Ann. & jour & apres l'an. luy covient de ſur un Scire facias, t'mes dl ley.

Et nota que apres le Fieri facias un home poet aver le Elegit; Sed non econtra; entant que le Elegit eſt de plus haut nature que le Fieri facias.

Dyer 100. Co. 4 72. *Sur Elegit, Execution, & appreiſement covient eſtre fait* per ſacramentum 12. &c. *& nemy per le vicont, mes autrement eſt de Execution per* Fieri facias.

Co. 8.96. & 171. *Sur* Fieri facias *le vicont poit vender leaſe, ou terme pur ans (ſa. enquire dl value dl Leaſe per Jury)* vide antea, Execution ſur Elegit Dyer. 363. & Co. 8.143. *que le vic. eſt command & compell per le bre. de vend.* For the words of this writ be Præcipimus tibi quod de terris & catallis præd. *I.S.* in balliva tua Fieri fac. Centum ſolidos, & illos habeas, &c. ad reſpond. &c. Regiſter 58. *Vnc. le ſeiſes dl vic. ne alter le property, tanq; ſont vendus.* Dyer. 99.

Sur Fieri facias *le vicont doit vender pur levier le det.* Co. 5.90. Vide Co. 8.171. & 143. *Et nul enqueſt beſoigne de priſe ſur ceo.*

And yet upon a Fieri facias the Sheriff may either praiſe and ſell the goods without an enquiry, or elſe he may praiſe the goods by a Jury, and then ſell them, which ſeems to be the more ſafe and indifferent way.

Mes per ſeiſes dl vic. in Fieri fac. *de bie. les property dl bie. ne ſont altred, tanq. ſont vendus.* Dyer 99. *& Gawdy accordt.* Anno 3. Jacobi R.

Sur execution le vic. ne doit deliver le argent al Plt. mes il doit deliver ceo in Court, & le Court ceo delivera al Plt. per Cur. Mich. 36. Eliz. vide 21. H. 6 fol. 5. & Fitz. 265. c. h. *vnc. ſes* Capias ad ſatisfac. *ou ſes* Fieri

facias, *ſi le vic. pay le money al Plaintiff, ſee bon &c.* vide hic c.38.

per *Sur* **Fieri facias** *ſi le vicont vend les biens, & apres le judgment eſt reverſe in brieſe de Error, uncore le defendant navera reſtitution de ſes biens; mes le value del eux, pur que ils fuer. vend: & ceux que iſſint achate ticl biens del vic. poient loyalment enjoyer eux. Car le vic. que fiſt le ſale avoit loyall authoritie a vender, & per le ſale le vendee ad abſolute property in les biens, &c. Et ſi le vendition del vic. per force del* **Fieri fac.** *ſerra avoid per ſubſequent reverſall del judgment, donque nul voile achater, & per conſequence nul execution ſerra fait.* Co.5.90.& 8.96. & 143.

Et accordt. a ceo eſt le caſe in **Dyer** 363. *Lon le vicount in execution dun* **Fieri fac.** *vend un terme dl def. per bre. de venditioni exponas, & in Court deliver les deniers al Plaintiff, & puis le judgement fuit reverſe per errors, & per l' opinion dl Manwood, Dyer, & Wray, le Terme ne ſa. reſtore, eo que ceo fuit vend loyalment, ſed le argent que viet in loco Termini ſerra tantum reſtore.*

Sur **Fieri fac.** *le vicont execute le brief, mes ne retorne ceo, vuc: bon.* **Vide hic poſtea c.38.**

Fieri fac. *iſſiſt vers vincent, & deut l'execution il devy inteſtate. L'ordinary commit le Adminiſtration, & le vic. levy l' execution ſur les Adminiſtration, & deliver ceo al party; Quere ſi l' execution fuit bien levy ſes le Adminiſtration.* **Dyer 76.**

Le vic. avoit **Fieri fac.** *a luy deliver vers A. & apres A. mor. & donque le vic. (ou ſon bayly per ſon garrt.) execut. le bre. & fuit tenus per Wray & Gawdy que le execution fuit bon, & loyalment fait ſur le executors ou adminiſtration C. les bie. queux A. avoit al tps. dl execution agard, ſont liable in mains d' aſcun eſtr. Ou in quacunque mains il. devient, & donque le mort dl. party in. ne pt. defeat le execution. Ceo fuit le caſe dun Pierce, ers Mouſe, Hoo, & auters.* **H.30.Eliz.Rot.31.**

Auxi ſi home vend ſes bie, dent execution, & apres judgment, & **Fieri fac.** *iſſit vers cey. vers que le recovery fuit ſolement, Ceux bie. in mains le vende ſerra miſe in execution, per Wray, & Clinch, in Caſu prædicto.* **Vide hic c.29.Contro.**

CAP

CAP. 31.

Now followeth the Manner and Formes of ſuch Precepts, Proces, or Writs which go out upon the Original, and whereby the Defendant is called or brought into the Court, &c. and how the Sheriff, &c. is to execute the ſame, &c.

Summons.

Mr. Lambard ſaith that the Saxons (our Anceſtors) their proceedings in judgement was de plano, and without ſolemnity, They not uſing to call the parties by any writ, Proces, or writting, but to ſend for them by certain meſſengers, which they termed Themes, that is to ſay Miniſters or ſervants.

Alſo he ſaith, that when that manner of ſummoning by writ was firſt brought into uſe here, yet were not thoſe writs made in the Kings name, nor ſealed by the Lord Chancellor; For it is to be ſeen in Mr. Glanvile, that the original writs of his time had this forme, ſc. teſte Ranulpho de Glanvilla, &c. which then was the name of the chief Juſtice of the Kings Court, under whoſe ſealing they paſſed abroad.

But at this day all Proceſs are to be made out in the Kings name only. 27 H.8.c.24.

And all writs or Proces concerning the Common Law, ſhall be gwarded under the great Seal of England, 28.E.1.c.6. Vide plus hic fol. 222. & ſcribe hic.

Summons is a writ directed to the Sheriff, &c. to bring in the party by a day; Or to cite or warn one to appear at a certain day and to anſwer, &c. ſc. in jus vocare, and the ſummons muſt be made by (or in the preſence of) two or three ſummoners, and theſe ſummoners ought by Law to be boni (vide Co.L.158 b.) liberi & legales homines, and neighbours, as it ſeemeth. And Sir Ed. Co.L.6 b. ſaith that a ſummons of the tenant muſt be proved by two or three witneſſes. *Summons.*

The Summoneas is the original proces, and goeth out of the Chancery.

And in Real actions the Sheriffs order to ſerve or execute this Proces, is to go himſelf, or to ſend his Bayliff to the land with the Summoneas, and there to garniſh, cite or warn the tenant or party, by ſticking up a white ſtick in his land, which done, the Sheriff muſt returne two common pledges for the Plaintiff, and then the names of the ſummoners, thus,

Pledg.

Pleg. de proſequendo { Johan. Doo. / Ricardus Roo.

Summonitores Infranominati *I.S.* (the Def.) { Ricardus De. / Henricus Ferr } See hic cap. 45.

Mes ſi le Plt. intend de outlawer le deff. donque il obtain un ſummone-as direct al vic. de garniſh le party, & ſes ceo le vic. retorne nihil habet, & donque le Plt. procura Capias de prender ſon corps, & apres un Alias, & Pluries, & donque un Exigent, come patet hic poſtea.

See hic c. 50. another manner of Summons of the Recognitors an aſſiſe.

Note that this ſummons (or warning) of the Defendant to appear and anſwer, &c. is ſo neceſſary by the common Law, as that without the ſame, all the proceedings yea, and the judgement after, are oftentimes fruſtrate and erroneous, and beſides the Sheriff ſubject to danger and puniſhment.

And therefore if a man recover in a writ of Dower, or Waſt, &c. by the default of the Def. where in truth he was not ſummoned, (nor attached, nor diſtrained) the Def. may have a writ of Diſceit, againſt both the Sheriff and the Plaintif. Fitz. Diſceit 3. 5. & 56. & Fitz. N. bre. 105 [2].

Ac etiam per default de le Summons, le Def. ſerra reſtore a ſon terr. Fitz. Diſceit. 7. & 48. & Fitz. 98. b. d. vide plus 7. H. 6. 38. & Dyer 353.

Auxi in bre. vers A. & B. & E. (le feme de B.) per divers Precipes, in le ſummons E. fuit omitt, & le bre. abate per ceo. 2. E. 3. 39. 8. E. 3. 44. & 27. H. 6. 6.

Auxi in bre. do Dower per ſeveral precipes, de nome dl un des tenants fuit omitt. in ceo clauſe dl bre. unde queritur, &c. Et auxi in le ſummons, per que le bre. fuit abate envers eux touts. Fitz. bre. 671.

Et per le liver appell le Mirrors des Juſtices. libro. 2. *Nul eſt tenus a reſponder a nul action real, ne mixt, avant ſummons fait aver.*

In a writ of Treſpas, the Sheriff returned Non eſt inventus, whereupon a Capias iſſued out to take the Def. who afterwards came into the Court, and ſaid that he was ſufficient, and that he might have been ſummoned, and prayed a writ to cauſe the Sheriff to come to anſwer to the King, and to the party, for his falſe returne, and he had it. Fitz. Proces 55.

Nota le original proceſs in real actions, eſt un ſummons, & apres ſil ne veigne, un attachment iſſera, & apres diſtreſs infinite. Finch 94. & 106.

Meſme Proces (ſc. Summons, Attachment, & Diſtreſs infinite) eſt in tots actions perſonals, ſi non in treſpas, in que eſt nul. ſummons, mes tantum attachment, & diſtreſs. Finch 106. vide hic c. 112.

Mes per le liver appell le Mirror des Juſtices. lib. 2.

Reals

Reals actions per non Introductions per ſummons.

Perſonal actions, per attachment de corps.

Mixt, primes per ſummons, & apres per attachments.

Alſo note, that in real actions the Sheriff (or his officer) ought to ſummon the tenant upon the Land. Dyer. 104. 22. H. 6. 38. vide.

But in an action of debt brought for damages recovered in a writ of entree, &c. the ſummons ſhall be to the perſon. 22 H 6. 38.

In a Petit Cape the Sheriff muſt ſummon the tenant to anſwer to his default, and to hear his judgement in regard of his default, ſc. upon his default, after plea, iſſue or demurrers. Finch 87.

But in a Grand Cape the tenant ſhall be ſummoned to anſwer to the default, and further to the demandment.

In ſummons in real actions, the ſummoners in the preſence of the pernors or veiors, &c. ought to ſummon the tenant, firſt to keep his day of the return (and to name that in certainty) to anſwer to the defendant, &c. Secondly, they ought to name the name of the demandant, and laſtly, they ought to name the land in demand. Co. 6. 54. vide hic c. 75. & 70.

This word Pernor ſeemeth to ſignifie the pernor or taker of the profits of the land; quære; or the occupyer or farmer thereof. Vide Finch 86. *Pernor.*

And the word Veior, to ſignifie ſuch as are ſent by the Court to take view of the place in queſtion, for the better deciſion of the right. Minſh. Vide Co. L. 259 b. *q. le ſummons doit ee. per ſummoners & veyors, & le ter. ſa. priſe in les mains le Roy per le Pernor.* vide Fitz. 86 *q. ſes le Grand Cape le vic. eſt de prender le ter. in mains le Roy, per le view de legal homes, queux ſont appell veyors, les autres pernors.* *Veior.*

And the Sheriff by force of the Præcipe, may come upon the land with the ſummoners, and there ſummon the party againſt whom the præcipe is brought: yea, if the Sheriff by information of the demandant ſhall ſummon the tenant in another mans land, the Sheriff ſhall be excuſed. Doct. & St. 150.

But the Summons (in a præcipe) ought always to be done in the day-time, (ſc. between Sun-riſing and Sun-ſetting) and not in the Night.

Note that the Defendant (in every writ) ought always to be ſummoned fifteen days (at the leaſt) before the day of the return of the writ. See Stat. 28. E. 1. c. 15. Fitz. 177. d. Br. Sum. 6. Et hic poſtea tit. Proclaim. & Attachm. Co. L. 134 b.

31. H. 6. Note alſo that the Sheriff, &c. cannot ſummon the party by a rent-ſervice, rent-charge, common, reverſion, nor the like; for that the ſoil is another mans freehold. Br. retorne de breve 124. & Sum. 14. *Per quel choſe.*

And

And yet in caſe where tenant for life prayeth in an ayde of him in reverſion, and a Scire facias goeth out to warn or ſummon him in reverſion, and the Sheriff returneth that he hath nothing in that county but the reverſion of that land in which he hath ſummoned him, it is holden to be a good return; for he ſhall be ſummoned in terra petita; and yet it was another mans freehold. 38. aſſ. pl. 12. ſo aſſ. pl. 8 & 45. E. 3. vide Br. Sum 12. 16. 21. 23. 24. Fitz. Ret. 101.

Where the action is to recover the freehold of land it ſelf, the ſummons muſt be made in the ſame land. Finch. 344.

Where the action is brought againſt one as heir, there the ſummons muſt be in land that did deſcend. ibid.

Mes ſi le tent. ou def. app. neſt. mabriall in ql. terr. il eſt ſummon. ibid.

Upon a Præcipe, if the Defendant be not Tenant of the land, &c. yet the Sheriff is to ſummon him in terra petita, eo quod petens teſtator quod tenens eſt. Fitz. Ret. 97. & Br. Summons 23.

And indeed the writ commandeth (the Sheriff) not to ſummon the Tenant upon his own land, but generally that he ſhall ſummon him, naming not in what land; and then by a Maxime in law it is taken that he ſhall ſummon him upon the land in demand. Doct. & St. 150. vide Kitch. Ret. bre. 54.

In a Ceſſavie, the Tenant was ſummoned in other land which was not in demand; he ſhall not plead this; but if he makes default, and a grand cape is awarded, he may wage his law of Non-ſummons; but if the tenant appear upon the ſummons, it ſufficeth in what land ſoever he were ſummoned. Br. Sum. 7.

Nota quant le tenaunt appear per le ſummons, il ne prender advantage apres, adire que il ne fuit bien ſummon: Eadem Lex *ſil ſoit eſſoine, car tout ceo affirme le ſummons.* 46. E. 3. Br. Sum. 22.

If the Sheriff ſhall return one ſummoned who was not ſummoned, the Sheriff is puniſhable. vide hic c. 70. & 85.

Per perſon. Note alſo if the Sheriff ſhall ſummon him which hath no land, to or by his perſon, and ſhall return him ſummoned, it is good: and in actions of annuity, covenant, or the like, ſummons is the proces, hath the party land or not; and where a man hath no land where he may be ſummoned, there the Sheriff may ſummon him by his perſon. 33. H. 6. 42. 4. H. 7. 7. Br. Sum. 1. 7. 8.

And ſo in all perſonal actions, the Sheriff muſt ſummon the def. by his perſon, 22. H. 6. 38. a.

A man may be ſummoned by his goods, ſc. in aſſiſes.

In a Scire fac. againſt the Clerk, the Sheriff is to ſummon him only by his land (if he hath any lay fee) or by his perſon, but not by his goods: by Priſot. 32. H. 6. f. 11. Fitz. Ret. 23.

Of

Of Novel diſſeiſin and Nuſance, where the Original Proceſs is an attachment, ſc. Pone per vadios & ſalvos pleg. there the defendant may be ſummoned, ſc. attached by his goods. Finch 345. & 96.

In a Precipe quod redd. the tenant vouched a Biſhop to warranty, part of whoſe temporalties were in the Kings hands; he ſhall not be ſummoned in his temporalties ſo long as they, or any part thereof remain in the Kings hands, although there be aſſets in his hands whereon to be ſummoned. 38.E.3.Br. Sunmons 17.

In Ieſgliſe. In a writ of right of Advowſon the Sheriff may ſummon the defendant in the Church. Br. Retorn. 101. 11 H.6.

Alſo in a Quare impedit, the Sheriff may ſummon the defendant in the Church, per Martin 11 H.6. Br. Retorn. 101. *Et iſſint per adviſe fuit fait inter Lanceletum Epiſcopum Elienſ. & Lauther de cel Liver.* Anno 16. Jacobi Regis.

In auter countie. In Attaint, the tenant was returned Nihil, and it was teſtified that he had land in another Countrey, whereupon ſummons went out thither: Quod nota 21. E.3. Br. Sum. 18. And note alſo that a man may be ſummoned in divers Counties. 21.E.3. Br.Sum.19.

In a Præcipe againſt four, the Sheriff cannot ſummon the one, but that is a ſummons to all. 3.E.4 Br.Sum. 10.

And yet in a Præcipe againſt two, th'one is returned ſummoned and th'other not, this is no good returne. 5.H.7.27. Br. retorn 89. ſo that all the defendants muſt be ſummoned by the Sheriff.

Alſo in a Præcipe there ought to be two Summoners; for if there be but one, and the tenant maketh default, and loſeth by default, he ſhall have a writ of Deceit againſt the Sheriff, &c. Plo. 393.

Leygager. *Nota que ſi le tenant ne fuit ſummon ſecundum legem terre, ne ſa trye per Pais, mes le tenant poit gager ſen ley de non ſummons* (ut ſupra) *& un-core Corporation, Recluſe, & Decrepite, ne poient faire lour ley, mes lour ſummons ſerra trie per pais.* 33.H.6.f.8. Thel.334 quære. Co. 9. 31.32 & N.bre.177 & Finch.86. Vide Thel. 332.

Note alſo that the Sheriff cannot ſummon himſelf; *Et per ceo ſi le vic. ſuffera Recovery, ceo eſt erronious.* Dyer. 188. & 266. Plo. 73. & Finch 6.

The Book called the Mirror of Juſtices, giveth theſe Rules following (amongſt others) concerning Summons.

Reaſonable Summons, *eſt quant il eſt teſtifiable per deux loials franke teſtmoignes, voiſeius, fait a le perſon, ou a le meaſon, ou al tenement containus in le demand, oveſque garniſement del jour, Liew, party, Judg, & de l' action, & le reſonable reſpite al mains de 15. jours de pervoir reſpons, &c.*

Auxi le tenant. pt: prender ceux Exceptions al Summons ſc.

- *Que il ne fuit point ſummon.*
- *Que il fuit ſummon trop tarde.*
- *Que il ne reſceive le ſummons per nul frank home.*
- *Que il ne fuit ſummon* { *ces ce. e. error freq. per un Summoner* } *ſi le dr. procced.*
- *Que il ne fuit ſummon al feif, ſc. al freehold ou tenement in la demand.*
- *Que il ne fuit garny, ſur quel choſe il reſponder, ou vers tiel actor, &c.* ibid. Libro 2. & 3.

Nul eſt ſummonable freq. un foits ſur un cauſe.

Nul home ſerra arct d' eſtre Summoner, ſil ne voile de ſon gree.

Femes, ne Serffs, ne Enfants, ne ul infamiſe, Ne nul que neſt feif (ou freehold) tenant, ne pt. ee. bon Summoners.

CAP. 32.

Attachment.

After the Summons, if the defendant or tenant cometh not in, then there iſſueth out an attachment, which is a Proces authoriſing the Sheriff, to go to his houſe or land, and there to take ſurety by pledges, or to attach him by his goods, to the end that he ſhall appear and anſwer, &c.

Attachment

The word Attachment in our Law ſignifieth a taking hold, or apprehending by commandment of writ, and differeth from an arreſt, or Capias, which is only of the body of a man, whereas an attachment at this day, is ſometimes of or by the body, and ſometimes of or by goods. Minſh. See Walker Lam. f. 95.

In Real Actions, le Original Proces eſt ſummons.

In Mixt Actions, le Original Proces, eſt ſummons, & apres attachment.

In tots Actions de treſpaſs, le Original Proces eſt Attachment, & Diſtreſs infinite; Et ſur le attachment, ou Diſtreſs, retorn Nihil, trois Capias iſſera, & puis Proces de utlary Fitz. 92. a & 100. d. Finch. 102, 106.

In auters perſonal actions, le Original Proces eſt ſummons, attachment, de corps, & Diſtreſs infinite. Finch. 106. hic c. 31.

The forme of the attachment at this day is thus, *Pone per vadios & ſalvos Pleg. B. quod ſit coram Juſtic' &c. ad reſpondend' A. de placito, &c.*

And note that the defendant cannot be attached by his land; nor by any parcel of his freehold (as by a Clodd, &c.) nor by any chattel real (as a Leaſe for years, or a ward, or the like) 7. H. 6. & 27. H. 6. Br. Attachment' 1. & 4. & 4. & Finch. 94.

Neither

Neither may a table dormant, or any other thing which is faſtned to the free-hold, be attached (as a furnace, wainſcot, doors, windows, pales, or the like) 20.H.7.13,21.H.7.f.26. And if the Sheriff ſhall attach a man by any ſuch thing, he is puniſhable.

But an attachment ought to be made by ſuch goods of the defendants own as are moveables, ſc. by meer chattels perſonal, (which may be forfeit by utlary, and) which ſhall be forfeited by the default of the party, ſc. if he appear not. Br.1.4. See Dyer 199. pl.54.

And this attachment by goods is only where the Proces is *Pone per vadios, & ſalvos Plegios.*

Fitz.93.H.1. In debt, treſpaſs, or the like, a man ought not to attach the defendant by his horſe whereupon he rides, where he hath other goods whereby he may be attached; but if he hath no other goods, then the officer may attach him by the horſe he rideth upon. Br.23.

Neither may a man be attached by his apparel. 7. H. 6. Br. 4. But this ſeemeth to be underſtood of his apparel which is upon his body; for if his apparel lieth by him, &c. it ſeemeth he may be attached thereby.

Neither ſhall any goods be attached, but the proper goods of the party, and not goods that are pawned, or borrowed, &c. 35.H.6.Br.20.tit. Attachment.

And therewith alſo agreeth the book of 13.H.4.f.2. that if the Sheriff or his officers ſhall attach my horſe in the poſſeſſion of my ſervant, for the debt of my ſervant, the officer is a treſpaſſor to me. Vide Fitz. Treſpas.14 55.Dr.& St.138.&149.

And therefore the Sheriff and his officers are to be well adviſed by what goods they do attach a man, ſc. whether they be the proper goods of the party attached, &c. for they at their peril ought to take knowledge to whom the property of the goods doth belong. See Fitz. Treſpas. 14. & 243. & Doct. & St.149.150.

An attachment may be made by pledges as well as by goods, ſc. by finding pledges or ſureties to appear. Br.Attachment.1.7.& 9. Per pledges.

Plegii dicuntur perſonæ qui ſe obligant ad hoc, ad quod qui eos mittit tenebatur. Minſh.

Et vuc. ſemble que ceux Pledges ne ſerra lye in aſcun ſomme (come mainpernors ſerra) mes ſi le party attach per pledges, (de venir & reſponder, &c.) ne appear, mes fait default, ces Pledges ſerra amercie al Roy, &c. Cromp. author. des Courts 169.

Ou le bre. eſt, Pone per vadios, & ſalvos plegios, &c. la ſi le vic. trouve party, il pt. luy attach per Pledges; Et ſil ne luy trove, il pt. luy attach per ſes biens. Fitz. *Retorn. dl. vic.57.*

Alſo yet if the officer ſhall give warning to the tenant in the preſence of other honeſt men, to appear, &c. it is holden to be good

enough, although he made no other attachment by goods, or pledges, &c. 34. ass. Br. 9.

Note also that a Bailiff sworn and known, may not make an attachment without a Warrant; but a warrant by word only is sufficient. Br. Attach. 15.

Also the servant of the Plaintiff may make the attachment, if so be he hath the Sheriffs warrant to make the attachment. 26. H. 6.

Per Parol The Sheriff commanded his Bailiff to make an attachment, and the Bailiff commanded his servant to do it, who did it, and it was holden to be good, and all this was by *parol* without any warrant by writing. 27. ass. p. 67. Br. Attach. 15. & 16.

But if a stranger without any commandement or warrant from the Sheriff or his officers, &c. shall make an attachment, this is void, and besides the stranger is thereby a trespasser, &c. And the Sheriff may in these cases be examined by the Court, whether he made any such warrant, or no.

Note that goods attached, if that they be quick cattell, the Bailiff or other officer may put them in the common pound; but if they be dead chattels (as pots, pans, or the like) there the officer may take and carry them home to his own house.

Forfeiter Where the Sheriff or his officers, &c. shall attach another by a cow (or by any other goods) if the party shall not appear (at the day of his return) his cow, or other goods attached, are forfeited to the King, and the Sheriff shall be answerable for the value thereof; and therefore the Sheriff, &c. had need either to keep the goods attached, or else to take security to be saved harmless therein. 9. H. 7. 6. 34. H. 6. 19. Dyer 199. Dyer 199.

Nota que le property del biens attach, ne sont hors del party, tanque le jour del retorne, & que il fait default; mes si al jour del retorne le party fait default, donque le vic. ou son officer poit prender tiels biens come forfeits, coment que il ad lessa tiels biens, ove le party que fuit attach per eux: Et sic nota que sur attachment, le vic. ou auter officer poit (a son election) prender les biens attach. ove luy, ou poit lesser & relinquier eux ove le owner, & apres prender eux sur default del apparance per le owner. 9. H. 7. 6. Br. Attach. 10.

Also it seemeth that the Sheriff, or his officer, upon their attachment and leading of the goods attached with the owner (as aforesaid) that they may take an obligation of the owner of those goods for the delivery of the same goods, if the owner shall make default of appearance; and that such obligation shall be good.

Nota auxy, que per essoine, lattachment (ou les biens) attach est save, non obstant que il ne appear al jour dessoine. Br. Attach. 3. & 11. *Mes* 34. H. 6. 29. contra. *Ou cesty que fuit retorne attach in trespas.* per 20. Oves Precii, &c. *le defendant fuit essoine, &c. & al jour il fait default, il forfeiter lattachment; mes per* Ashton *sil appiert al jour del attachment, ou al jour del essoine adjourne, il savera lattachment, aliter non.*

Nul biens attach serra forfeit, mes in courts de record, & nemy sur Justices in

in le county, per aſcuns opinions, tamen alii e contra. ſc. *que les choſes attachdent le vic. in le County Court, ou ſur Juſtices, ou in aſcun Court Baron, ſerra forfeit.* hic cap. 112. vide Br. Attach. 2. & 19 & forf. 2, 4.

7. H. 6. Br. Attach. 4. A woman covert ſhall be attached by the goods of her husband, for the husband is to bring in his wife Vide Fitz. Attach. 2. & 4. forf. 17. & Retorn. 73.

And a Monk ſhould have been attached by the goods of his Sovereign. 7. H 6. Fitz. Attach. 2. contin. 17. & *Retorne dl vic.* 73.

And yet ſome opinions have been to the contrary in theſe two laſt caſes; for that if the wife or Monk, ſhall make default of appearing, they ſhall thereby forfeit the goods attached: and ſo they ſhall forfeit that which is none of theirs, which cannot be. 7. H 6. Fitz. Attach 2.

The Defendant ought always to be attached fifteen days (at the leaſt) before the day of the return of the writ. Br. Attach. 1. 5. 6. vide Co. L. 134. b. 27. aſſ p. 67.

And if the party be not ſummoned and attached, it is error. 19. aſſ. 7. Br. error, 116. And the officer ſhall be amerced. Liber. Intrac.

Auxi le tenant ou def' pt. plede Nient attach per 15. jours. Fitz. 2 14. 43. (*ſi non Aſſiſe, de qua infra.*)

Mes nient attach generalment neſt pas plee, pur ceo q. il eſt contrarient al Retorne dl. vic. 2. R. 2. fol.

Nota triall de uient attach per 15. jours ſerra tantum per examination del officer qne fait le ret. & ſil ſoit abſent, l'attachment ſerra intend deſte fait accordant al ley (ſc. per 15. jours) & le def. ſerra agard de reſponder. Vide Br. Attach. 6. 12. 17. & 18, Co. 9. 31.

Vnc. in 26. H. 6. Br. Attachment. 17. *In aſſiſe le tenant plede nient attach per 15. jours, & le plt. dit que ſon ſervant fiſt le Attachment, & il fuit demand, & ee. ant. abſent ne pt. ee. examin. per que novel Attachment fuit agard*

Auxy nota que in Banke le Roy ils allow attachment in aſſ. de novel diſſ. de 8. jours, & de meins. Br. Attach. 13. vide ib 5. & 8.

Vid. Fitz. 94 b *Quant le def' ad eſtre Attach in Real actions, & ne appear ſur ſon attachment; Ou ſil appear & apres fait default, donque iſſer le grand diſtreſs, per que le vic. eſt command a diſtrain le def' pro tots ſes biens & chattels queux il ad deins meſme le County; & auxi de reſpond. al Roy les iſſues de ſes ters & d'aver le def. in Court ad reſpond. & ad Audiendum judicium ſuum de pluribus defaltis. vide le forme dl bre.* Fitz. 94. & St. 52. H. 3. c 9.

Nota quod pro tranſgreſſione facta contra Coronam Regiam, quæ tangit vitam & membrum, defendens ſive delinquens Attachiatus erit per Corpus.

Et pro tranſgreſſione facta contra pacem Regiam (ſicut de verberatione, de clauſo fracto, de bonis aſportatis, de arboribus ſucciſis, & de ſimilibus) defendens Attachiatus erit per Plegios, vel aliter.

Sed

Sed in caſu de injuſta detentione Catallorum, Replegiare, de Debito, & ſimilibus, in horum aliquibus defendens Summonendus eſt, & in aliis Attachiendus, juxta eorum naturas.

Et le liver appell les mirror des Juſtices, lib. 2. *eſt a tel purpoſe*, ſc.

Les Attachments dl offendors mortals, ſa. per le Corps, ſa. Plevin.

Les Attachment dl choſes ou offences perſonals, ſont auxi per le Corps, ir de a plevin.

Note that in all treſpaſſes the Proces is an Attachment; ſo that if a Capias goeth out firſt, and the party taken thereby, he ſhall be diſmiſſed. Finch 355.

CAP. 33.

Capias ad reſpondendum.

Capias. Si nihil ſoit retorne ſur le ſummons, Capias *iſſera per le common ley.* Fitz. Waſt. 45. & *ceo Proces eſt de prend. & impriſon. le party*, &c.

Auxi ſi nihil ſoit retorné ſur le Attachment, ou Diſtr. (in treſpas ou aut. perſonal actions) donques iſſera Capias, Alias, Pluries, & Exigent Fitz: 92. a. *Termes del ley tit. Proces.*

Mes in divers actions ſont divers manners de Proces, que eſt plus alarge declare per Fitz. in ſon natura brevium.

Capias eſt de deux ſorts.
- *devant judgment*, Capias ad reſpondendum.
- *apres judgment* — Capias ad ſatisfaciendum. Capias pro fine.
- *ceo eſt* quadrup. — Capias utlagatum. Capias ad valentiam.

Nota que eſt un rule in ley que in touts actions, Quere vi & armis, Capias (ad reſpond.) *giſt, & ou* Capias *giſt in Proces, la apres judgment* Capias ad ſatisf. *giſt, & la le roy avera* Capias pro fine. Co. 3. 12.

Sur le Capias ad reſpond. *ſi le vic. retorne*, Nihil habet in balliva ſua, &c. *tunc iſſer'*
- Alias Capias.
- Pluries.
- Exigent.

Note that if the Pluries be not ſerved, it is a contempt in the Sheriff, whercupon an Attachment lieth againſt him. 2. E. 4. fol. 1.

Si le def. ne ſoit briſe, ne render luy meſme, ſur le alias ne Pluries, donque ſur Non eſt inventus retorne per le vic. ſc. chun de eux, la iſſer un Exigent (ou proces de utlary) viz. un Exegifacias direct al vic. de proclaim le party in 5. ſeveral Counties, ſur le jour de ſon County, apres queux proclaim. ſil ne appear, le vic. retorne luy, Quinto exactus, & non eſt inventus, & ideo utla-

utlagatus; Simon q. il ad primes purchaſe un Superſedeas de ſurceaſir, &c.

Mes nota q. Exigent ne iſſera deut' 3. Capias agard' &c. 8. R. 2.

Devant le ſtatute de 25. E. 3. c. 17. *un* Capias *ne giſer in det' ne le corps del def' ne fuit ſubject al arreſt pur det ſur ſpecialty, ou contract, &c.* Vide hic antea Execution ſur Capias.

Le perſon (ou corps) del Baron, ou aut' Peere del realm, ne de Counteſſe ou Baroneſſe ne ſerra arreſt in det, ou tru's, mes in caſes de contempt ils
Co. 6. 53. *poient eſtre arreſt'* Co' 6. 52. &c. *Et vnc ſi* Capias, *ou* Exigent *ſoit agard vers tiels (ſur det ou treſpas) lofficer poit bien juſtifie de execute ceo.*

Capias ad ſatisfaciendum, *eſt breve de execution apres judgement, de que* vide hic antea fol.

Capias pro fine, *eſt lou un perjudgment, eſt fine al roy, &c. ſil ne diſcharge tiel fine accordant a le judgement, ſon corps pur ceo eſt priſe & commit al priſon, tanque il ad pay ſon fine al roy, ou done ſecurity pur le paiment del ceo.*

Capias utlagatum. *giſt vers luy que eſt utlage ſur aſcun ſuit, donques ſur cel brief, il ſerra priſe, & miſe in priſon, ſans baile ou mainpriſe, pur ceo que il ad fait contempt encounter le ley.*

Nota que in Treaſon, & mort de home, la ſerra freq; un Capias, (ſoit in caſe de Murder, ou Homicide:) En auters felonies (come in Burglary, Robbery, & Larceny) la ſerra deux Capias: —— Et in Mayhem la ſerra trois Capias, deut le Proces de utlary. Br. Proces. 149. Fitz. Co. 234. Finch. 69.

Capias ad valentiam, *ceo auxi eſt apres judgement, & giſt lon home eſt implede de certain terre, & vouch a garranty un auter, & il ne ſcavoit pas barre le demandant, iſſint que le demandant recover, donque le voucher recovera tant in value vers le vouchee, & donque iſſera cel brief de viel Nat. bre:* 179.

There is alſo a Capias in Withernam de homine, &c. See hic Retorn de breve de homine replegiand.

There is alſo a Capias in Withernam, de Averiis, &c. See hic breve de Witherna m, & tit. County Court.

Note that where the Sherif hath arreſted one by force of a Capias ad Reſpondendum, if the plea ſhall happen to be diſcontinued, by the death of the King, or by any other way, there the Sherif of his own authority may ſuffer his priſoner ſo arreſted, to go at liberty. Keil. 2, hic c. 126.

CAP.

CAP. 34.

Venire Facias.

Venire facias This Writ of Venire facias is of two ſorts.

The one is to cauſe the party, ſc. the Defendant to come in, and anſwer, &c. and this is but as a ſummons to warn the party to appear, &c. And upon this if the defendant be returned ſufficient, and maketh default, then a Diſtringas ſhall be awarded: But if a Nihil habet, &c. be returned at the firſt, then after the Venire fac' there ſhall go out a Capias, alias, pluries, & Exigent.

The other is after appearance, when the parties be at an iſſue, then the plaintiff or defendant ſhall have this writ, to cauſe the Sheriff, &c. to impannell and returne a Jury, and this alſo is but as a ſummons to the Jurors.

If upon this Venire fac' the Sheriff ſhall return the names of the Jury, and they do not appear at the day, then ſhall go out an Habeas Corpora Juratorum, and after that a Diſtringas Jurator, to diſtrain them until they come, &c. N. bre. 171. Plus hic c. 77.

There be divers other ſorts of this writ (of Venire fac') as you may ſee in the Table of the Regiſter Judicial, verbo venire fac' all which the Sheriff is to execute, as the writs themſelves do direct.

CAP. 35.

Diſtringas.

Diſtringas. This writ is directed to the Sheriff, &c. commanding him to diſtrain the party for his, or the Jury for their appearance, &c. or to diſtrain for the Kings debt, &c. for this ſee hic antea cap. 11. Regiſt. 77. b.

Meus ou home eſt attach per ſon Corps, la ul Diſtr. iſſera apres.

A Diſtringas for the appearance of the party to anſwer, as alſo for the Jury ſhall go out infinite, ſc. until the party cometh in and appear. Fitz. 59.

Ceo eſt dit diſtres infinite, quia ceo iſſer perpetualments tanq' il appear. Fitz. 59. b.

And this Diſtringas is a Proces to diſtrain the parties, or Jury, by their goods, and the iſſues of their Lands, to come and appear; the which

which they ſhall loſe and forfeit to the King if they come not. Fitz. 59. b.

Britton cap. 71, ſaith that this diſtreſs for appearance, is of two ſorts; Perſonal, by taking the moveable goods of the party, and detaining them for the ſecurity of his appearance to the ſuit.

Real is made of the moveable goods; as the Grand Cape, and petite Cape.

The wife ſhall be diſtrained by the goods of her husband, and theſe ſhall be returned by the Sherif in iſſues, and ſhall be forfeited if the wife come not. Fitz' Attach' 4.

Nota que ceo diſtreſs infinite ſemble d'eſtre al comon ley, in liew de que le Grand Diſtreſs eſt ore donc in divers caſes. Vide ſtat. 52. H. 3. c. 7. & 98 Weſtm' 2. c. 7. & 9. & hic. antea c. 32.

And this grand diſtreſs is when the defendant hath been attached, and yet appeareth not; or when he appeareth and after maketh default, hic cap. 32. I.

The great diverſity alſo of this writ (of Diſtringas) as you may ſee in the table of the Regiſters Judicial, verbo Diſtringas.

Plus hic Retorne de Diſtring. c. 56.

If the Sherif returns to ſmall iſſues upon any Diſtr'. See hic c. 41.

Scire facias.

Scire facias. *Scire fac' eſt breve judicial, direct al vicont, &c. Et uſt ſualment de garner home de vener & monſtre cauſe al court, &c. quare execution dun judgement que eſt paſſe ne ſerra fait: Mes ceſt brief ne ſerra grant devant que l'ann & jour ſoit paſſe apres le judgement done.* Termes del Ley.

Upon this Writ of *Scire* fac. it ſeems that the Sherif hath no more to do but only to warn the party to appear, &c. according to the Writ, and then to return the ſame: See hic poſtea c. 63.

There be divers other ſorts and manners of Proces, as well in actions real as perſonal, which you may ſee at large in Fitz. natura brevium.

Nota q. touts Proces ſerra fait in Nome le Roy tantum. 27. H. 8. c. 24.

Auxy ul brief ou Proces concernant le comon ley ſerra agard ſouth aſcun del petite Seales. 28. E. 1. c. 6.

CAP. 36.

Return of Writs.

REturnes are nothing else but the Sheriffs answer touching that which they are commanded to do by the Kings writ, and are but to ascertain the Court of the truth of the matter; and yet this seemeth to be the most difficult thing belonging to their office: for the Sheriff must be very careful and circumspect that he make these returnes according to Law, both for substance, and forme; otherwise he shall not only endanger himself to be amerced, or sued for the same (as you may see hic postea c 126. &c.) But also he shall indamage the parties, and may hazard the Cause or suit it self: for you shall find that judgements have been often staied for defaults apparent in the Sheriffs returne; yea and that judgments have been also reversed, by writs of error, for such cause. See 5. E.4. fol. 109 & 9.H. 6. Br. Ret. 43.

Note that in the execution of all writs and Proces of Law, the Sheriff and his officers must therein do all that which they shall be commanded to do by the writ it self, and they must pursue the effect thereof in every behalf; and they may proceed no further, or otherwise in the execution thereof, then they are authorised by the writ: and besides the Sheriff is to return the same writ into the Court whence the writ came.

But where the writ or proces is directed to the Bishop, there the Bishop is to make returne thereof; and so where the writ is directed to other persons (as to the Coroners, &c.) they are to make return thereof.

2. H. 7. f. 8. For the manner and form thereof of returns of writs; first they must be made according to the ancient course, and according to the presidents, and by the usual words, otherwise they are not good. See hic. c. 56. 70, & 78.

The form. And therefore in a writ of right, the writ to the Sheriff is to return four Knights, to chuse the grand Assise returnable such a day, and the Sheriff returneth that they were no Knights but Burgesses, whereupon the Sheriff was amerced; and another writ went out, &c. and thereupon the four Knights were demanded, who came to the bar girt with their swords, &c, and so it seemeth by the opinion of master Brook, that the Sheriff must return them Knights, although they be no Knights; for so be the presidents, as you may see hic postea c. 57. But if they have a sufficient estate of lands within the County, it seemeth sufficient though they be no Knights: see the like case and reason given, Fitz. 164. a.

7. H. 4. Br. Ret. 106. vide Plo. f. 117 & 229. a. *Knights.*

Waste was assigned in *S.* the return must not be quod accessit ad S. but quod accessit ad locum vastatum, 27. Hen. 8. Br. 2.

2. H. 6. 6. Upon a Scire fac' the Sheriff returneth Ego R. O. Ar' vic' &c. vobis certifico. *Vobis certificeo fieo.*

certifico; it is not good, for it ought to be vobis Iuſtic' infra ſcript' certifico.

And yet in a Scire fac' upon a fine, the Sheriff returned Scire feci, &c. quod ſit coram vobis ad diem & locum, &c. Exception was taken for that by this returne he might be garniſhed to appear before the Juſtices of the Kings Bench, Common Pleas, or any other Juſtice, &c. but the returne notwithſtanding was allowed, Fitz. Retorn. 118. 26 E. 3. And ſo in the former caſe, vobis certifico may ſeem to be a good return, for that this word vobis (in both theſe caſes) ſhall be referred to the Juſtices contained in the writ. See 3. H. 6. Fitz. Retorn. 3.

Venire fac. 12. &c. *le vicount returne* venire feci, & non executio iſtius brevis, *& auxi il retorne forſque* 12. *& pur ceux cauſes il fuit chaſe damender ceo.* 2. H. 7. Br. 84. Fitz. Retorn. 34.

So in a Habeas Corpora Jurator, the Sheriff muſt return them attached, and not quod habet corpora. And ſo in a Diſtringas per omnes terras, he muſt returne Exitus, &c. 2. H. 7. f. 8. Br. 84.

And yet ſee Liber Intrac' fol. 388. b. where in a Diſtring. the Sheriff returned quod I. & A. diſtr. ſunt per catalla ad valenc' 116.

Alſo in a Precipe quod reddat, if the party yield the land; or in debt, if he pays the money; yet theſe are no good returnes (and yet the writ is Precipe quod reddat *le terr, ou le det*) but theſe returns muſt be made, according to the ancient courſe. 2. H 7. Fitz. 34. vide plus Fitz. Retorn. 116. hic c. 73.

16. H. 7. The Sheriff returneth, quod virtute præcepti, &c. cœpit corpus de I.S. and exception was taken thereto, for that the returne was not virtute brevis, &c. and yet it was holden to be a good return; for the Sheriff may take one in Weſtminſter-Hall, by the commandment of the Juſtices without any writ. *Virtute præcepti, virtute brevis:*

In the return of garniſhment by A.B. and C.D. theſe words probos & legales homines ſæm material (for elſe the Summoners may be perſons attainted or outlawed, &c.) and yet if the Sheriff returneth Scire feci per A.B. & C.D. without the words probos & legales homines, it is ſufficient, eſpecially if the defendant appears, and it may be amended. 33 H. 6. 35. 8. H. 6. 27. & 44. E. 3. 36. Fitz. Retorn. 8. & 25. *Probos & legales homines.*

9. H. 6. 57. The Sheriff ought not to return quod defend' nihil habet, prout ſibi aliquo modo conſtare poterit; vel non eſt inventus prout ei conſtare poterit, but he ought to return directly, quod nihil habet, vel non eſt inventus' otherwiſe he ſhall be amerced. Fitz. retorn. 9. *Prout conſtare poterit.*

The Sheriff upon a Diſtr' Jurat. returneth, quod breve adeo tarde ſibi venit, (or deliberat. fuit) quod illud exequi non potuit propter brevitatem temporis, and it was holden a good return: vide 21. H. 6. 51. Br. 52. Fitz. retorn. 37. and yet by the book 2. H. 4. fol. 7. upon a Capias, Tarde is no good return. Plus hic c. 53. *Tarde.*

Et nota que le vic. poet in cheſcun brief, Retorne Tarde, ſinon in un attachment, & ſur un Capias.

But if the Sheriff ſhall make ſuch a return, where he hath ſufficient time to ſerve the writ, he ſhall be amerced, &c. or rather he ſhall yield damages to the party grieved, according to the Statute of 13. E. 1. 39. Abr. d' aſſ fol. 137.

So if the Sheriff ſhall return mandavi ballivo libertatis, qui mihi ſic reſpondit, quod breve adeo tarde venit, quod illud exequi non potuit, &c. Here the Sheriff ſhall be amerced; for it ſhall be intended that the writ came to the Sheriff ſoon enough, and that he hath detained or kept it by ſo long time, where he might have made deliverance, &c. And indeed the miſchief is great which may enſue upon this return; for by this means the Plaintiff ſhall never come to have his proces ſerved, at leaſt in time. 2 H. 4 fol. 7. for this laſt.

Non inveni, for, *Non eſt inventus.* The Sheriff returned non inveni partem, &c. for non eſt inventus; and the party being thereupon outlawed, aſſigned this for Error, and it was adjudged to be error, and not to be amended. 9 H. 6. fol 11. Br. 43.

Mandavit for *Mandavi* The Sheriff returneth quod mandavit ballivo de E, &c. for mandavi ballivo, &c. and was therefore amerced.

Et vec. ieo aye view le report a' un caſe in communi Banco, que Mercer eſteant utlage al ſuite d' un Hower, move per avoider le utlary, per ceo que le vic. returne le Exigent ſur le dorſe del bre. ſic vid. Superdictus Mercer, lon (il dit ceo) doit eſtre Infranominatus Mercer, c. riens fuit ſupra eſcrie mes infra; Sed touts les Juſtices tient que nient ob. ceo, le Returne ſoit bon: Et per Curiam ſi le vic. uſt eſcrie le Returne, in le inner ſide del bre. & ney ſur le dorſe del bre. vuc. ceo bon. Et per Windham ſi condition dum obligation eſcrie ſur le dorſe ſoit in ceo form, ſc. ſi predictus I. S &c. lon doit eſtre infranominatus, vuc. ceo bon, ces liuient tout un, & adonque le parol ſerra priſe aſſets ſignificant.

Superdictus for *infranominatus.*

Alſo upon a Diſtringas Jurator', the Sheriff ought to return the Names of the Manucaptors of the Jurors. Br. Returne 86.

Momina Manucapt' & Summonit', &c.

In a Scire facias to execute a Judgement or Fine, the Sheriff ought to return the names of the Summoners and Veiers. 3. H. 7. 8. Br. Ret. 86.

So upon the *Grand Cape*, the Sheriff ought to return the names of the Summoners and Veiers: Ibid.

Iſſues. Alſo upon the return of a Jury, the Sheriff is to return iſſues upon every perſon impannelled and returned by him, ſc. upon the return of the Habeas Corpo a Jurator, and upon the Diſtringas Juratores, but not upon the Venire facias, as it ſeemeth.

And yet in theſe former caſes, if the parties, &c. ſhall appear and plead (it ſeemeth) though the Sheriff, &c. ſhall omit to return the names of ſuch Manucaptors, Summoners, Veiers, or ſhall return no iſſues, the return ſhall be amended, and ſhall be no error: But yet Mr. Brook holdeth it to be error if the return be not good, notwithſtanding any appearance: Ideo quære, vide 8. Hen. 5. fol. 2. b. 3. H. 7. fol. 8. Br. Ret. 86.

Iſſint

Iſſint apres le tenant ad appeare in Court, il n' avera advantage d' aſcun default in forme de Retorne; mes ſi ceo ne ſoit bon, poet eſtre amend. per Priſot. 33. H. 6. fol. 31.

The Sheriff in a replevin returneth that the Cattel are in a Fort, Caſtle, or Park, ſo that he could not make deliverance, &c. It is not good, but there he ſhall be amerced for ſuch his return; for that he might have taken Poſſe comitatus, and ſo have made deliverance. 8. H. 4. Fitz. retor. 48. *Que ne poet fair deliverance.*

If the Sheriff ſhall return a reſiſtance, it is not good, for he ſhould have taken the power of the County, &c. But he ſhall be amerced for ſuch his return; for that it tendeth to the diſhonour of the King and his Crown, 13. E. 1. c. 39. See Fitz. Execution 147. & Retor. de vic. 88. *Reſiſtance.*

The Sheriff returneth a Reſcous, it ſeemeth not to be good: vide Br. Ret. 66. 39. H. 6. The reaſon is, for that he might have taken Poſſe comitatus, as aforeſaid. And yet ſee the Books 10. E. 4. fol. 17. & 3. Hen. 7. fol. 11. the Sheriff returned a Reſcous; and in the one Book, for that the place where the Reſcous was made, and in the other, for that the place where the Reſcous was commanded to be made, were not certainly ſet down, therefore the returns were holden to be inſufficient, and the Sheriff amerced therefore, whereas otherwiſe the Sheriffs return of the Reſcous had been allowed: Ideo quære & vide hic returne de capias. *Reſcous.*

Dyer. 69. pl. 29. Fitz. Retor. 32. Br. Retor. 88. Plus hic, c. 54.

Alſo in the Book of Entries, tit. Reſc fol. 579. c. d, you ſhall find divers forms of Reſcous returned by the Sheriff, Plus hic c. 54. And note, that where the Sheriff ſhall return a Reſcous, he muſt ſhew in what place, day, and year, the ſame Reſcous was made. Fitz. Attach. 1. Retorn. 32.

Alſo a Reſcous returned againſt one without any Addition, is good. Br. Exig. 49. & 13. H. 7. 21.

But Quære if the Sheriff by his former Return doth not charge himſelf, eſpecially if that it may appear that he once had the body, &c. Vide Dyer 212. & 13. R. 2. Fitz. Retor. 74. *L' on ſur un Capias le vic. retorne Cepi Corpus, & illud deliberavi Conſtabel Caſtri de S, &c. & un Abbe la viet vi et Armis, & luy repriſt hors de ſon gard, &c. la fuit tenus per Curiam que le vic. aver charge luy meſme per ceſt Retorne.*

Upon a Fieri facias the Sheriff returned, *Que il aver levy 20 l. qx. il n' oſa maunde per dout de prædication*; but the return was diſallowed, and the Sheriff amerced, for that he had not the money. Fitz. Retor. 90.

Upon a Capias the Sheriff returned, that the Party committed Felony, and took ſanctuary, which priviledge he could not break, this was a good returne: See Br. Returne 29. & 46. *Sanctuary.*

But if upon a Capias the Sheriff had taken the body, and then had come with his priſoner along by a Franchiſe, &c. and then the priſoner had claimed the Franchiſe: here it ſhould have been repuſed the folly of the Sheriff to bring his priſoner by ſuch Franchiſe, and the

Sheriff

Sheriff was chargeable with the body, notwithstanding such Return. 2.H.4. Br.Esch.38.

Arrest devant. Upon a *Capias* the Sheriff returneth, that before the coming of the Writ, the Defendant was taken and detained in prison, by force of a warrant from a Justice of peace in the Countrey, for the finding of Sureties for the peace, &c. yet the Sheriff ought (as it seemeth) to bring in the party into the Court, and then after that the plaintiff hath counted, and the Defendant hath put in his answer, he shall go under Mainprise, and be remitted to the Sheriff for to answer in the Countrey before the Justices of peace, &c. 2.H.7. fol.2. Br.Respon. 33.see 9.H. 6.44.

Upon an Habeas Corpus directed to the Sheriff against any man condemned, or in prison, upon an Execution, &c. the Sheriff ought to return the truth and cause of his former imprisonment, and withal to bring in the prisoner into the Court, &c. See hic postea c.54. & 63.

Upon a Corpus cum causa, or other writ, directed to the Sheriff, if he shall return that he hath commandment to surcease (*comt. tiel commandement soit south Privy Seal direct a luy per le Roy*) yet if he shall not execute the writ, he shall be amerced. Vide hic cap.63.

Inhibition. The Bishop being commanded to certifie Matrimony, &c. certifieth that he could do nothing, by reason of an Inhibition to him directed out of the Arches, and it was holden no return; for he ought to perform the Kings Commandment, notwithstanding the Inhibition: 36 Ed. 3. Br. Returne 112.

Clerk. In a Scire facias against a Clerk (that is beneficed (upon a recovery in a Quare Impedit) the Sheriff returned, quod Clericus est beneficiatus, &c. and therefore (by some opinions) the Sheriff was to be amerced: for here the Sheriff should have summoned him, &c. And yet it is a good return, quod est Clericus beneficiatus, &c. and therefore (by some opinions) the Sheriff was to be amerced; for here the Sheriff should have summoned him, &c. And yet it is a good return, quod est Clericus beneficiatus, non habens laicum feodum. Et quod non est inventus; for then he cannot be summoned if he be not found, nor hath Lay-fee. 32.H.6.11. Br.124.

Note that the Sheriff is not to return quod Clericus est beneficiatus, &c. but only in Cases where a *Capias* or Distringas goeth out (which are a Cohertion) or an Attachment, as it seemeth. Finch 354. Ibid.

Also in a Scire facias against a Clerk, the Sheriff is only to warn or summon the party, by his person, or by his Land, if he hath any Lay-fee. 32.H. 6.11. Fitz. Retor.23.

Where the Sheriff (upon a *Scire facias*) returneth quod Clericus est beneficiatus. Non habens laicum fœdum, there shall go a writ to the Bishop to sequester his Benefice. See hic c. 20. & 56. K.47.13.H. 4.fol.ult.a. E. 4.1.

Baron & feme. In an Assize against the husband and wife, the Sheriff returneth the husband attached, and the wife nihil; quære, if that be a good return; for by the better opinion of the Book 7.H.6. the Sheriff should have attached her by the goods of her husband: and yet by the Book, Br.Attach.4.

48.

48. Ed. 3. 25. & 49. E. 3. 1. Fitz' Ret' 73. it ſeemeth that the wife ſhall not be attached by her husbands goods; but the Sheriff ſhall return pledges upon the one and the other: Ideo quære.

7. H. 6. 5 Br 4. In a *Scire facias* againſt the husband and wife, the Sheriff returned that they are divorced, and was therefore amerced; for perſons that are divorced may have garniſhment, Quære & vide 1. H. 6. 2. Br' Ret' 63. Fitz' Ret' 1.

In a real action, if the Sheriff ſhall return the Tenant a woman Covert, or an Infant, the return is not good. Dyer 104.

Utlary returned by the Sheriff upon an Infant, is a good return, ſo as the Infant be above the age of fourteen years. 2. H. 5. fol. For an Infant is impleadable by the Law, and for his contumacy or contempt ſhall be puniſhed, as a man of full age ſhall be. Dyer 104.

14 H. 4. 12. Br. 14. Upon a Fieri facias againſt Executors, the Sheriff returneth that they had ſold the goods of the party dead before the writ purchaſed, and had taken money or other goods for the ſame; and the Sheriff was amerced for this return; for he ſhould have taken other goods of the Executors to the value thereof, &c. Fitz. Ret. 55. *Executors.*

Alſo it had been no return that all the Executors but one had nothing; for the Sheriff ought to make execution of that which was in the hands of that one Executor. Fitz' Ret' 55.

9. H. 6. 57 The Sheriff upon a Fieri facias againſt Executors, returneth, quod nihil habent, poſt adventum brevis, prout ſibi aliquo modo conſtare poterit, and for this he was amerced, for he ought to have returned directly, quod nihil habet: but the Sheriff may return, quod bona elongata ſunt, and thereupon Execution ſhall be of their proper goods.

And yet if the Sheriff ſhall return, Quod bona Elongata ſunt, an action of the Caſe will lie againſt the Sheriff for ſuch his return, if it be not true.

Sur Fieri facias *vers executers, le vicount returne*, nulla bona, &c. *le plaintife poet avera ſpecial briefe de* fieri facias, ſc. *que le vicount levier le dett des biens le mort*, & ſi ſibi conſtare poterit *que les executors ont degaſt les biens, donque* de bonis propriis. Co' 5. 32. 11. H. 4. fol. 70. Fitz' Exec' 57. 2. H. 4. fol. 4.

Alſo the omiſſion of words uſual maketh the return not to be good, as where the return was Reſidium hujus brevis patet in quadam ſchedula, &c. for *Reſidium* executionis iſtius brevis patet, &c. this is vitious, 19. H. 6. Fitz' Ret' 14.

So in a *Scire facias* the Sheriff returned *Scire feci* A. quod ſit coram vobis, &c. and did not ſay further, ad faciend' quod breve requirit, and it was adjudged to be no good return: 16. E. 3. & 26. E. 3. Fitz. Ret' 77. 119.

Iſſint aſſiſe fuit Returnè ſic Plegii. E. V. infranominat' A. B. & C. D. *Ou le returne ſerra.* E. V. infranominat' attachiat' eſt per Plegios A. B. & C. D.

Et

Et pur default de eco parol attach, le returne tenus void: 5.E.4.Br' 93. Vide & quære.

Again every return ought to anſwer the point of the writ (as it ſeemeth) and therefore where the writ (to the Sheriff) was, quod Scire facias, hæred' terrarum & tenentorum quæ fuere M. &c. and the Sheriff returned, quod Scire fecit W. H. militi, fil. & hered. predict' M. &c. And it was aſſigned for Error, for that he did not return him heir of ſome Lands or Tenements, according as the writ required; for his Warrant was not to ſummon the heir of M. but the heir of the Lands and Tenements of the ſaid M. Sæ Co. 3. 15.

Where the writ directed to the Sheriff, hath in it this clauſe, vel cauſam nobis ſignifices, it ſeemeth the Sheriff may return the ſpecial matter or cauſe &c.

Certain. Alſo the return of the Sheriff ought to be certain to every intent, as a Declaration ought to be; and the Sheriff is bound to take knowledge of the Law in making his return: and therefore in a Scire facias Laurentio Both magiſtro Aule de *B.* in *Cantabr'* & ſcholaribus ejuſdem, &c. the Sheriff returned quod Scire fecit Magiſtro, &c. And did not ſay, Scire feci Laurentio Both Magiſtro, neither ſpake of the Schollers, and therefore it was holden to be a void return. Fitz' Ret'. 26. 32. And yet Vide Co. 8. 127, 128. that the Sheriffs return being only to aſcertain the Court of the truth of the matter, it requireth not ſuch preciſe certainty as is required in pleading. 3.H.7.11.2. 12.a.Br.ret. 88.ſee Co.8. 127. 128. Fitz.Retorn 32. 34.H.6.49. Br.ret.14.

Yet in a ſcire facias againſt Elen. Prioreſſ' de W. the Sheriff returned ſcire feci Prioreſſ' de W. without ſaying Elen' Prioreſſ' and it was holden good. 29.E.3.33.

If the Sheriffs return be uncertain in the year, day, or place, it is not good. Dyer. 69. pl. 29. & Fitz' Attach' 1.

And yet theſe, or the like words, in the return, ſc. prout (or ſecundum quod, or ad faciendum quod) iſtud breve exigit & requirit, do oftentimes help the uncertainty. Vide Fitz' Ret' 2,44. & 83.

The Sheriff upon a *Capias* returneth that he arreſted the Defendant at D. and would have carried him to the Gaol, and that W.N. did reſcue him, and it was holden no good return; for that he did not ſhew at what place W. N. made the reſcue; and it ſhall not be intended to be where the Arreſt was, Dyer 69, Fitz' Ret' 32. 10.Ed.4.15. Br.Ret.97.

Alſo Termino Paſch' 6. Eliz' Benlows, Serjeant, ſhewed to the Court, that upon a Capias ad ſatis fac' the Sheriff had returned a Reſcous, and had not therein ſhewed the place where the Reſcous was made: and thereupon the opinion of the Court was, that the return was not good; for that it was not certain from whence the Venue ſhould come, if the matter were traverſed.

Upon an extendi fac' the Sheriffs return was holden void by reaſon of the uncertainty, &c. See hic c. 58.

In a Premunire the Statute is that the Defendants ſhall be warned by 43.E.3.7. Br.103.

4. E. 3. 7. Br. 103. by the ſpace of two moneths before the day of the return, and for that the Sheriff returned the warning generally, and did not ſay what day, nor that it was two moneths before the return; therefore the return was holden to be inſufficient; yet the contrary was holden: 39. Ed 3. 7 Br. 56. And that it ſhall be intended that it is well ſerved according to the Law; for other Writs ought to be ſerved by the ſpace of fifteen days before the return, and yet no mention thereof is made in the return: And if the Sheriff do not warn the party, nor ſerve the Writ as he ought, the party if he be damnified, may have a Writ of Deceit againſt the Sheriff.

8. H. 7. 6. Br. 116. And ſo in a Pluries for a Corodie, the Sheriff returneth that the Biſhop of H. is founder, and returneth not the name of that Biſhop which founded it, and therefore it was holden to be incertain, quia oportet nominare primum Epiſcopum fundatorem, ſc. Herbertum, &c.

Upon a Scire fac. againſt one upon a Statute, the Sheriff returneth mortuus eſt, whereupon a Writ went out to warn one I. and his heir, and R. and W. the *terre tenants*; And the Sheriff thereupon returned *Scire feci hered. & terre tenentes*, without naming the heir, or *terre tenants*, by their proper names, and for this the Sheriff was amerced, and another Writ awarded, Fitz. Retor. 69.

9. E. 4. 19. Br. 54. If a writ be returned thus, reſponſio vicecomitis *C.* and ſheweth not the Sheriffs name, it is no good return by the opinion of Jenny, 3. E. 4. Vide hic. cap. 41.

Ibid. If the Sheriff returneth Mandavi Ballivo libertat' R. and ſheweth not whoſe liberty it is, or who is Lord of the Franchiſe, this is no good return by Pigot, but Danby held the contrary. 9. Edw. 4. 19. See 1. Hen. 6. fol. 6. Br. 64. Fitz. Retor. 2. & 4.

The Sheriff returned Mandavi ballivo libertatis Ducis Lancaſtr. &c. and for that the Duke had divers Liberties within the ſame County, therefore the return was holden not to be good. See 1. H. 6. 6. Fitz. Retor. 2.

If the Sheriff returneth Mandavi ballivo libertat' de D. and ſaith not ballivo I. N. libertatis ſuæ de S. this was good by the opinions of three Juſtices, but Hales Juſtice held the contrary. 1. H. 6. fol. 6.

And according to this opinion of Hales, it was adjudged termino Mich. Anno 18. Jacobi Regis, that the Sheriff in his return is to ſet down the name of the Bailif of the Liberty. See hic poſtea cap.

1. H. 6. 6. Br. 64. Fitz. Ret. 2. In a Scire facias, the Sheriff returneth Scire feci, E. K. modo & forma prout iſtud breve in ſe exigit & requirit, and ſaith not infranominat' E. K. and yet this was holden (by the Court) to be good: for note that theſe words, prout breve exigit, &c. doth amount to infra nominatus, or infra ſcriptus; ſee the Books 2. H. 4. 13. & 3. H. 4. 9. Br. 28. Fitz. 44. the like return upon a *Scire feci*, againſt two or three ſeveral Tenants; the Sheriff returned *Scire feci*, &c. modo & forma prout breve exigit, &c. and it was holden to be good, without ſaying or returning ſeparatim ſcire feci, &c.

If the Sheriff return upon a Capias against I. & N. quod cœpit corpus I. & N. and saith not infranominat I. & N. this is misprision and must be amended, and yet by the Reporter it is well enough without amendment 12. H. 7. 19. Br. Amendment 64.

In an assize the Sheriff returned the Writ thus *I.* P. & A. P. attachiati sunt; viz. *I.* P. per unicum bovem pretii, 10. s. & A. P. per unicum equum pretii 40 s. and said not infranominati; this was holden to be erronious; for it might be intended that they were two strangers. 11 H. 7. 28.

The Sheriff attacheth one by his goods; he ought to return the certainty of the goods in specie, &c. hic c. 52.

Also the Sheriff shall return no Juror without some true and certain addition, by which he may be known. Hic c. 85.

But the Sheriff may return Painpernors, without any additions, 10. E. 4. 16. Br. exig. 49.

So the Sheriff may return a Retcious against a man without any addition. *Ibid.*

An Utlary was returned in this manner, Ad com. tentum apud I. in com. Sommerset I. M. exactus fuit & non comparuit, &c. and it was holden (by three Justices) a good return, although it were not Ad com. Somerset, tentum apud I. in com. Somerset; but Jay Justice held the contrary; for that it could not be intended of what County the County which was holden was; but alii e contra. 11. H. 7. 10. Br. 127. *Ideo quære.*

Note that in the former Case, this word Somerset, was not entred in the Margent, or upon the head of the return, which is and hath been the ancient usage, and seemeth also to be very material: See 11. Hen. 7. 10. a. b.

Also see Co. 10. 141. a return of an Exigent holden void for the incertainty, & hic. c. 59.

An Utlary returned in London, in these words, Ad Husting. tentum in Guildhall Civitatis Londini, tali die A. B. exactus fuit & non comparuit: this is no good return, for that there are two Hustings in London; one is de communibus placitis, the other is de placitis terræ; and therefore in such case the return must be Apud Hustingum de communibus placitis, &c. Or otherwise it is not good, for that the same may have two intendments.

The City of Norwich is within the County of Norfolk; also it is a County in it self, which may hold Plea; and therefore if a return be made in these words, ad com. tentum apud Norwicum in com. Norf. this is not good, for that it may have two intendments: sc. that the County which was held there was for the City, or the County of Norfolk: But if the return be in these words, ad comitatum Norf. tentum apud Norwicum in comitatu Norf. this is good; for now it cannot be intended, but only that this County was held for the County of Norfolk. 11 H. 7. 10. b.

2. *Intendments.*

In

Co. 4. 94. Dyer 105. In a writ of Error to reverse an Utlary in the County of Lancaster, the error was for that the Sheriff returned, quod ad com. Lancastriæ, tent. ibid. &c. where it should have been ad com. Lancastriæ, tent. apud Lancaster, or at some other certain place whereto that word Ibidem, might have had relation, and the utlary was therefore reversed.

21. H. 7. One was outlawed, and the Exigent was returned thus, ad com. tentum apud castrum de Oxen. primo exactus fuit, &c. and for that it was not set down in what County, it was holden to be erronious.

Ibidem. One was returned outlawed, and for that it did not appear that it was per Judicium coronatorum, it was reversed, and that without any writ of Error: 21. H. 7. fol.

27. H. 8. 29. Br. 3. An Exigent went out to the Sheriffs of London against *I. S.* of *D.* in the County of Essex Gent. and Proclamation to the Sheriffs of Essex, who returned the writ in this manner; Virtute istius b evis proclamari feci ad com. talem, tentum tali die, and did not set down in what year, &c. Et quod se reddit vic' Kanciæ. where it should have been vic' London: and for these causes it was holden no good return, and the Sheriff should have been amerced, but that the writ was returned in another term.

40. E. 3. Br. 17 In a writ to enquire of waste, the Sheriff returned quod cæpit Inquisitionem die Sabbati proxim' apud K. and for that he shewed not what Saturday, and also shewed not quod ivit ad locum vastatum prout breve exigit, it was holden no good return, and the Sheriff was amerced.

34 ass. 6. Br. 76 In an attaint the writ was, & diligent inquir. qui fuer. Juratores primæ Inquisitionis, and whether M. B. Miles were one of the petty Jury the Sheriff returned their names, and that M. B. was dead, and did not say M.B. Miles, so as it might be intended to be another person, and yet it was holden a good return.

2. E. 4. 1. In a Scire facias to have an execution of an annuity against a parson, the Sheriff returned, quod non habet bona, and notwithstanding that it was not further, Nec habuit die receptionis brevis, yet it seemeth to be intendable, and so to be good. So in debt or trespass. See hic Retorne in det. *Bon per intendment.*

In a Scire fac. the Sheriff returnes, quod Scire fecit I.N. prout breve in se exigit & requirit, it is good although he says not infranominatus, for it shall be intended: 1. H. 6. 6. Br. expos. 34.

So if the Sheriff returnes, Mandavi ballivo de D. and doth not further say, ubi terra jacet, it is good, for it shall be so intended, ibid.

So in a Scire fac' sued against two several tenants, the Sheriff returnes Scire feci a les. 2. quod fuit, &c. modo & forma secundum quod istud breve exigit & requirit, &c. And although the return was not Scire feci a les. 2 teparatim; yet for that the return was, modo & forma, &c. the returne was holden good: 2. H. 4 13. Fitz. Ret. 44.

So if the Sheriff in the former case had returned Scire feci a les. 2. quod sint, &c. ad faciend' quod istud breve exigit & requirit, it is good. Ibid.

In waſte, or Rediſſeiſin, in divers Towns, the Sheriff ought to go to all the Towns (though he may take his inquiſition at one) and he returned quod acceſſit ad D. & ibid. cæpit inquiſitionen, and holden good, for that by intendment he likewiſe might go to all the other Towns, &c. 40. aſſ. 23. Br. Rediſſ. 5.

See more the Sheriffs returne holden to be good by intendment: 28. aſſ. pl. 40. & 34. aſſ. pl. 6.

Alſo ſomtimes the return of the Sheriff is onely to certifie and aſcertain the Court the truth of the matter, and in ſuch caſe there needs no ſuch preciſe certainty as in pleadings: ſee the Caſe of the City of London, Co. 8. Co. 8, 107. 108.

If the returne be repugnant, it is not good, Dyer 278. vide hic Ret. de Seiſina in Dower.

Double. A double return made by the Sheriff is not good, as if the Sheriff returneth (the Pluries againſt an Abbot to admit the Kings Clarke to a Coradie) that the King is not founder, and that King Edward the 4. did releaſe to the Abby all Coradies, this is double and ſo void. 3 H. 7. f. 6. Br. Ret. 116.

Alſo the Sheriff is not to returne any thing which ſhould come in by the challenge of the parties: as in a Writ of Right the Sheriff returneth two knights, and two Serjeants, (to chooſe the grand Aſſiſe) this is a good returne; but if the Sheriff returneth this as a cauſe thereof, ſc. for that there were no more knights within the County, which were not of kindred to the parties, this makes the returne to be inſufficient, Cauſa qua ſupra. And yet Surpluſage in a returne, doth not make void the returne (as it ſeemeth) for as to the Surpluſage the Court taketh no regard, 32. H. 6. Fitz. Retorn. 23.

In all (or moſt) caſes, the Sheriff may make theſe returnes, following:

Tarde, &c. hic 64 b.
Non eſt inventus.
Nihil.
Mandavi ballivo Libertatis hic.
Clericus eſt beneficiatus.
Servic.

True. The Sheriff by his office and oath, is to make a true and juſt return of all Writs: ſee his oath & Dyer 60. b.

And by the Statutes, if the Sheriff ſhall make any falſe return, he ſhall be puniſhed, ſc. he ſhall be amerced, and beſides ſhall yeild damages to the party grieved: Stat. 13. E. 1. 39. & 28. E. 1. 16. 13. E. 1. c. 39. 28. E. 1. c. 16.

Where the father was condemned, and upon the Exigent upon a Capias ad ſatisfaciend. the Sheriff returned quod reddidit ſe, and it was the ſon which came (and ſo averred and found to be the ſon) the Sheriff was amerced. 7 H. 4. 13.

Upon an Exigent the Sheriff returneth quartus exactus, and the Coroners upon a Certiorare to them directed, certified that the defendant 37. H. 6. 21. Br. 59.

dant was outlawed, the Sheriff for ſuch falſe return was amerced at fourty pounds.

5 Eliz. c. 23. If any Sheriff or other having authority to return Writs, do make an untrue return upon any Capias, in a writ of Excommunicato capiendo to him directed, that the party named in the writ hath not yelded his body upon any Proclamation made, where indeed he hath yelded himſelf according to the effect thereof, he ſhall forfeit to the party grieved fourty pounds to be recovered by action, &c.

Fitz. 93. b. If the Sheriff in a writ of account, or debt, ſhall return upon one, quod non eſt inventus, nec habet terras, &c. per quod diſtringi poteſt, &c. whereupon a *Capias* ſhall be awarded againſt him, and he ſhall be taken thereupon, whereas he had lands ſufficient, or goods and chattels, then the party may have his action of the caſe againſt the Sheriff (directed to the Coroners) for ſuch falſe return.

Fitz. 97. c. In a præcipe quod reddat, if the Sheriff return the Tenant ſummoned, when he was not ſummoned, whereby the Tenant loſeth by default upon the *Grand Cape* returned: here the tenant ſhall have a writ of diſceit againſt him which recovereth, and alſo againſt the Sheriff for his falſe return.

48. Ed. 3. 15. 48. aſſ. 2. And yet in ſome caſes the Sheriff ſhall not be amerced or puniſhed for making a falſe return, as in an attaint: if the Sheriff ſhall return any to be of a petty Jury, which were not, yet caſes ſhall go out againſt thoſe whoſe names were omitted, but the Sheriff ſhall not be therefore amerced: ſee hic.

Note that the Sheriff cannot returne any thing which is contrary to the confeſſion of the party: As for a treſpaſs laid in D. and the defendant confeſſeth that there is ſuch a Town, here the Sheriff cannot returne Nul tiel ville in Com. &c. 3. H. 7. Br. Return. 87. & 37. H. 6. Fitz. Return. 27.

3. H. 7. 12. Br. 7. 5. H. 7. 27. Alſo note that the Sheriff cannot return any thing which is contrary to the verdict of the Jury, as in an action of debt againſt Executors, who plead that they have fully adminiſtred, and it was found againſt them, ſc. that they had aſſets remaining, whereupon a Fieri facias was awarded to the Sheriff to levy the ſum of the goods of the teſtator, and the Sheriff returned Mandavi ballivo libertatis de K. qui mihi dedit reſponſum, quod executores predicti teſtatoris non habent aliqua bona teſtatoris, &c. the which return was contrary to the verdict, &c. and therefore not good. Fitz. Ret. 35.

And yet for that he is a ſtranger thereto; and it may be that the defendant hath not aſſets within his County, and yet hath aſſets in another County, and then the Jury upon the former iſſue ought to finde aſſets, and yet the Sheriff cannot returne ſo, except they be within his County, whereupon the caſe was adjorned.

I have ſeen a report of a caſe in Communi Banco. 28. Eliz. where in an action of debt againſt Executors, who pleaded riens inter mains, the defendant did aver that they had aſſets, which alſo was found by verdict, and upon a Fieri facias to have execution, the Sheriff returned riens inter

inter mains; and the former boks of 3. H. 7. & 5. H. 7. were vouched to prove that the returne was not good, being against the verdict of the Jury (and therefore it was moved that the Sheriff should be amerced) But Roads Justice doubted thereof, and avouched the book. 7. E. 6. to the contrary, sc. that the Sheriff should not be concluded by the verdict.

Contra al bre. In a Replevin it is no good return that there are no such goods or cattel: 5. H 7. 27.

In a Writ to deliver goods upon a Detinue, it is no good return, that there are no such goods, ibid.

In an Habere facias seisinam, it is no good return that there is no such land, ibid.

Also in Writs of Seisin, it is no good returne to alledge Non tenancy in him whom the writ or Record supposeth to be tenant, Mauxels case. Plo 14. a. & Fitz. Return. 91.

The Sheriff cannot returne Nihil, where issues were returned by himself before.

Contra. al former returne. The Sheriff cannot return nihil upon him whom he hath once returned, summoned, or distrained upon another writ; tamen quære, for such return may be good upon some special matter returned. Vide 9. H. 6. Fitz. Ret. 10. 13. & Br. Ret. 7. 22. ass. 80. Br. 110.

By the opinions of Fort. and Markeham, if the defendant be returned sufficient, and after Nichil, it is good, for that the plaintiff may have a Capias, and an Exigent against him; but otherwise against a Juror: Br. 49. 19 H. 6. 38.

And yet in some cases, the new Sheriff is not concluded by the return of the old Sheriff, but may returne the contrary, &c. Sæ hic c. 44.

False Latin But false Latin is not greatly material in the return of a writ, &c as if the Sheriff shall return in a pannel, Johannis D. where it should be Johannes D. yet it is a good return. 2. H. 4 7. Fitz. Ret. 43.

The Sheriff returned Scire feci I. A. Cl'io, whereas it should be Cl'ico, and it was amended: 7. H. 6. 1. Fitz. Ret. 6. 7. H. 6. 1.

CAP. 37.

Cepi corpus. If the Sheriff return upon any person Cepi corpus, or Reddidit se, the Sheriff shall be chargeable to have the bodies of the said persons at the dayes of the return of the writs, Bills, or warrants, &c. 23. H. 6. c. 10. And so was the ancient common Law, Fitz. Ret. 71.

The Sheriff returneth Cepi corpus, but hath not the body at the day, he shall be amerced: 44 E. 3. 2. yea although a protection were cast for the defendant: 11. H. 4. 57. Liber, Intrac' tit' Capias 19. Fitz. Return. 71. & Co. 8. 40. 44. E. 3. f. 2. 11. H. 4. f. 67.

So

So if the Sheriff returneth quod mandavit ballivo, &c. qui respondit quod cœpit corpus; and if the prisoner appeareth not at the day the Sheriff shall be amerced by some opinions; but by other opinions, the Bayliff only shall be amerced: see his postea.

The Sheriff returneth Reddit se upon the Exigent, but hath not the body, he shall be amerced.

Upon a *Capias* ad satisfac. if the Sheriff returneth a Cœpi corpus, and hath not the body, he shall not only be amerced, but also the plaintiff may have his action against the Sheriff for an escape, for that his return hath concluded him: Br. Ret. 107.

Upon a Capias for felony, the Sheriff returneth Cœpi corpus, but hath not the body at the day, whereupon the Sheriff was amerced for the escape at fifty pound.

Upon proces against the husband and wife, the Sheriff returneth, quod cœpit illos, and at the day the husband appeareth, but not the wife, and the Sheriff was amerced therefore.

But if the Sheriff had returned that the husband Non est inventus, and that he had taken the wife, and she only had appeared, that had excused him.

Upon a Fieri fac. the Sheriff returneth Fieri feci, &c Quas paratas habeo ad diem infra content. and at the day he hath not the money in Court, and after a new Sheriff was made, and it was moved to have a *Distring.* nuper vicecom. ad habendum denarios, &c. But Littleton said, That the Justices were advised upon this return, being of record, to award a *Scire fac.* against the old Sheriff to have execution; and if he could not discharge himself, then the party should have execution against the old Sheriff by Fieri fac. or Elegit. 9. E. 4. Br. Ret. 55.

Upon a Fieri fac. if the Sheriff levieth the money, but yet returneth not the Writ, nor payeth the money to the plaintiff, it seemeth the plaintiff may have his action of Account against the Sheriff: as also the defendant may have his action of trespass against the Sheriff for levying the money, and not returning the Writ; vide 11. H. 4. & 27. H. 7. 22. b. Br. Tresp. 211.

Now where the Sheriff shall be amerced for his returne:

Mr. Bracton lib. 5. tit. de exceptionibus c. 32. saith thus, Aliquando vicecomes negligens est in executione præceptorum Domini Regis, per fraudem. Aliquando illa exigi non potest propter impotentiam, unde nisi rationabilem pretendit excusationem, in misericordia Domini Regis remanebit. Contingit vicecomiti quandoque quod cum breve Domini Regis susceperit de Attachiando aliquem, post summonitionem factam, quod Attachiamentum non facit, nec breve quod ei inde venit remittit Quo casu, &c. *un alias issera commandt. le vic. de Attacher le def. quod sit ad talem diem*, Et quod ipse vic. tunc sit ibi auditurus Judicium suum de hoc quod pred def. non Attachiavit, nec breve quod ei inde venit misit sicut ei præceptum fuit, &c. *Ad* quam diem si vicecomes nihil inde fecerit magis quamprius fecit, nec se excusaverit, pro voluntate Domini Regis amerciabitur de contemptu, & tertio per bre, Domini Regis, &c. precipietur quod ei *Attachiet*, &c.

Mittit quandoque vicecomes breve quod inde susceperit, & fraudelenter rescribit & mandat, quod breve tam Tarde ceperit quod preceptum Domini Regis exequi non potuit. Quo casu si in contrarium testatum fuerit, &c. *Alias issera*, ut *super* &c. ibid.

Et issint est de autres faux Retornes del vic. &c. un alias issera ut super, & amerciabitur ut super. ibid.

Issint si vicecomes per imperitiam suam erraverit in modo & ordine *Attachi-*

Attachiamentorum & Diſtrictionum; ut ſi preceptum ſit ei, quod ponat per vadium & ſalvos Plegios, & ille mandat, quod, Diſtrixit per terras & catalla, vel E contrario.

Iſſint ſi Preceptum ſit ei, quod Habeat Corpus, & ipſe mandavit quod Attachiavit per Plegios, vel commiſit per ballivum, vel hujuſmodi, ibid.

Vic' amerc. Note alſo that the Sherif ſhall be amerced, yea ſhall yeild damages to the party grieved for his return in divers other caſes: ſee hic cap. 20.

As if his return be incertain or otherwiſe inſufficient: Br. Ret. 3. vide hic c. & 7. E. 6. c. 1.

So if his return be falſe: Stat. 28. E. 1. c. 16. & hic antea.

So if he make no return: hic poſtea.

So in a Replevin if he return that the cattel be in a Fort or Caſtle.

So if he return he could not execute the writ for reſiſtance, &c.

The Sherif ſhall be amerced for returning ſmall or no iſſues, upon the defendant. Stat. 13. E. 1. c. 39. & Bro. Ret 120 & 86.

The Sherif ſhall be amerced for not returning iſſues upon Jurors, according to the Statutes.

The Sherif ſhall be amerced for not returning pledges. Br. Ret. 25 61. 86.

See Mr. Bracton lib. 5. tit. de exceptionibus, c. 32. that the Sherif ſhall be amerced for making a falſe or inſufficient retorne or other negligence therein.

But note that the uſe is to amerce the Sherif the ſame terme only wherein he maketh his return; and if he be not amerced that term, then he is to go quit, quod nota per Fitz. 27. H. 8. fol 29. a. but this amercement is no recompence to the party grieved: and therefore the ancient ſtatutes of 13 Ed. 1. c 39. 28. E. 1 c. 10 & 2. Ed 3 c 5. (hic antea c. 20) were meet to be put in uſe and execution.

Par default de auter. Upon a writ to enquire of damages, the Sherif returneth that the Enqueſt or Jury gave or found no damages; the Sherif ſhall not be amerced for this default of the Jury: for the Sherif ſhall not be amerced, but where he returneth the writ falſely or inſufficiently of himſelf, whereas here he returned it as the Jury had preſented it. Fitz. Ret. 66. 44. E. 3. 3. Br. 20.

Del Southvic' And yet the Sherif ſhall be amerced for the default of his Undersherif; as in the book of Aſſiſes, where the Undersherif returned a pannel by a precept directed to one who was not Baylif of Franchiſe, by reaſon whereof the pannel was quaſht; there the Sherif himſelf was amerced and not the Undersherif; and an action of the caſe doth lie againſt the Sherif himſelf; for the return is alwaies in the name of the Sherif himſelf: ſee hic poſtea tit. Sheriffs Officers. 38. aſſ. p. 13. Br. 77.

Del Bayliffs So the Sherif ſhall be amerced for the default of his Baylif.

If any Baylif or other Officer ſhall impannel or return any perſon, upon any inquiry in the Sheriffs Turn, which is not of good name, and have 20 s per annum of Freehold, or 26 s 8 d. per annum of Coppyhold, &c. ſuch Officers ſhall loſe for every perſon otherwiſe returned or impanelled forty ſhillings, and the Sherif other forty ſhillings, &c. 1. R. 3. c. 4 hic poſtea Sheriffs Torne.

Del Bayliff de Liberty. Alſo ſometimes the Sherif hath been amerced for the default of the Baylif of the liberty; and therefore where two were indited of felony, and pleaded not guilty, the Sherif returned certain perſons, and by examination of the Juſtices it appeared that they had not ſufficient freehold, according to the Statute, and the Sherif was amerced at five pounds, 38. aſſ. 19. Br. Chal. 129.

pounds, the Sheriff ſaid that the Bailiff of the Franchiſe of Bury made the Return; whereunto Green Juſtice anſwered, That the King had no Miniſter but the Sheriff.

But note that in this Caſe the King was a party, and where the King is a party, no Franchiſe ſhall be allowed, but the Sheriff himſelf ought to have ſerved and executed the Writ.

Br. 14. 89. The Sheriff returned a Capias, qd. Mandavit Ballivo, &c. qui reſpondit quod cepit Corpus; and the priſoner appeared not at the day, the Sheriff was amerced; for where the Bailiff made a falſe return to the Sheriff, and the Sheriff returned it (as quod cepit Corpus, and had it not at the day) yet the Bailiff ſhall not be amerced; for that he is not the immediate officer to the Court, but the Sheriff is the immediate Officer.

And yet there were ſundry authorities to the contrary, ſc. that in the former Caſe the Bailiff of the Franchiſe was to be amerced, and not the Sheriff; and that the default was only in the Bailiff, and not in the Sheriff: for upon ſuch return of the Bailiff (to the Sheriff)

Br. Retor. 35. 87. 92. 94. 96. 99. quod cepit Corpus, &c. The Bailiff was bound to bring in the body into the Court at the day, or elſe to deliver the body to the Sheriff, and then the Sheriff was to bring in the body as the immediate Officer to the Court. Vide liber Intrac. tit. Capias. div. 20. & Fitz. pr. 22.

Br. 89. But where the Bailiff of the Liberty made an inſufficient return to the Sheriff, and the Sheriff returned it, he was amerced, and not the Bailiff; for that the Bailiff was not Miniſter to the Court, 20. E. 3. Fitz. Retor. 113.

And therefore when the Bailiff made an inſufficient return, the Sheriff ſhould have done well, and might have returned, quod nullum dedit reſponſum; for an inſufficient anſwer or return, is as none. Fitz. Amerc. 1.

As in a præcipe againſt two, the Bailiff returneth one of them ſummoned, and the other not; this is no anſwer; and if the Sheriff return this, he ſhall be amerced, Br. 89.

2. H. 6. 9. Br. 47. So in an Aſſiſe the Sheriff returned, Mandavi ballivo, &c. qui mihi reſpondit, &c. and returned but nine Jurors, and the Sheriff was amerced; for that he ought to have returned, quod mandavi, &c. qui nullum mihi dedit reſponſum.

3. H. 7. 12. Br. 87. So the Sheriff returned, Mandavi ballivo, &c. qui mihi reſpondit, that the Executors had no goods of the Teſtator, which return of the Baily was contrary to the Verdict of the Jury (who had found aſſets, &c.) and therefore the Sheriff was amerced; for that the return of the Bailiff appeared inſufficient in Law, whereof the Sheriff ought to have taken notice, and in ſuch caſe to have returned, quod ballivus non dedit reſponſum.

And yet in a Writ to enquire of Waſte, the Sheriff returned, quod mandavit ballivo Libertatis, qui mihi nullum dedit reſponſum, and the Sheriff was therefore amerced; for that the Sheriff (by this Writ) is made a Judge of the Cauſe, and might have entred the Franchiſe, &c. 11. H. 4. Fitz. Retor. 53.

But if the Bailiff maketh a doubtfull return, and the Sheriff returneth this, it ſeemeth he ſhall not be amerced, by the opinion of Viſor. 5. H. 7. 27. Br. 89.

27. H. 8. 24. 1. E. 3. cap. 5. But now by the Statute made 27. H. 8. cap. 24. amerciaments for inſufficient returns of Writs, made by Bailiffs of Liberties, ſhall be ſet upon the heads of ſuch Bailiffs, and not upon the Sheriff; nor upon the Lord of the Franchiſe, Dr. & St. 134.

CAP. 38.

Where the Sheriff makes no Return.

NOta le commencement del Suit, eſt tots foits per brc. Original hors del Chanc. ſouth le Grand Seale D'Angliter, Teſte Rege; Et retornable in le Court qui ent tiender plea (ſont Bank le Roy, Common Bank ou Chancery meſme:) Mz. tanq; Retorne le ſuite n'eſt diſt pendant; Ne les Courts ne teignant plea ſinon ſur Original retorne deut eux; Et pur ceo ſur Original retorne Tarde (ſc. adeo tarde venit quod executiones inde facere non potui) Alias, & Pluries, iſſer. hors del Court, lon l'original eſt retorne, Teſte le Cheife Juſtice, cer per le Retorne le Court eſt poſſeſſ: Mz. ſi nul Retorne ſoit fait, le Alias, & Pluries iſſer. hors del Chancery. Finch. 52. 53.

Et le teirre brief niet retorne per vicount, eſt un Contempt ſur que Attachment giſt vers le vic. 2. E. 4. 1.

By the Statute of Weſtminſter 2. cap. 39. Damages are given againſt the Sheriff, if he makes no return at all, or ſhall make a falſe return, &c. vide hic. c. 20.

Fait nul retorne. If the Sheriff will not return his Writ (in caſe of Rediſſeiſin, or Utlarie) the party may have a Certioriari, directed to the Sheriff, to command and cauſe him to return the Writ and the Sheriff ſhall be amerced for ſuch his fauxity and Concealment. Dyer 223.

If a Capias, or other mean proceſs be executed, and not returned the Arreſt is tortious and a wrong; for the Arreſt is made to that end that the Defendant ſhould appear to anſwer to the Plaintiff in his action: But if an arreſt be made by the Bayliff, and the Sheriff will not return the Writ, this laches of the Maſter ſhall not prejudice the Servant; for the Baily cannot compel the Sheriff to return the Writ: but contrariwiſe of the maſter himſelf, ſc. if the Sheriff taketh one upon a Capias, and returneth not the Writ, an action of Faux impriſonment lyeth againſt him, by him that was arreſted, and the Plaintiff alſo ſhall have his remedy againſt the Sheriff, Littleton 18. E. 4. 9. Br. Treſpa. 339. Br. falſe impriſonment. 5. 7. & 12. ac'. And yet in the book of 13. H. 7. fol. 12. this difference is taked, ſc. that if the Bailiff of a Liberty by vertue of a Warrant from the Sheriff Arreſts a man, and after the Sheriff returneth Non eſt inventus, the Bailiff ſhall be diſcharged in an action of falſe impriſonment, for that he is not the Sheriffs Bailiff, but the Kings or ſome other Lords; but otherwiſe it is of the Sheriffs Bailiff, if he arreſts a man by vertue of a warrant from the Sheriff, and after the Sheriff returneth Non eſt inventus, this Bailiff is chargeable in an action of falſe impriſonment; for it ſhall be accounted his folly to do a thing by his Maſters warrant or commandment, and then his maſter will not return the Writ according to that which he hath done. See 21. H. 7. fol. 22. accord. that the Sheriffs Bailiff or ſervant is not bound to do any thing but that which his maſter wil juſtifie.

Co. 5. 90. Cro. 86. 89. Fitz. Scire fac. 30. 3. H. 7. 36. 21. H. 7. 22. 2. Vide Cro. 86, 87, 89.

It hath been holden, that (upon a Fieri facias) the payment of the Sheriff to the party Plaintiff, was to no purpoſe; for that the Defendant

fendant is a Debtor of Record, and therefore ought to be discharged upon Record: And for that purpose the Fieri fac. is, Ita quod habeas denarios hic, to the intent that the money should be paid to the Plaintiff in Court upon Record, and the Defendant discharged upon Record, and so the Sheriff must have made his Return. Vide 11.H.4.Fitz. Bar.183.& 19.E.3.Fitz.Scire fac.120.& hic cap.30.

Co.4.67. & 5.90. But in all Writs of execution (except an Elegit) as upon a Capias ad satisfaciendum, Haber. facias seisinam, vel possession. Fieri facias, Liberate, &c. if the execution be duly done, although the Writ be never Returned or Filed, it is no great matter, if the Plaintiff have his demand; for then he hath no cause to proceed any further therein: Yet in case of an Elegit, because the extent is to be made by an Enquest, and not by the Sheriff alone, that ought to be returned, or else it is nothing worth.

Co.4 67 a. Also where no enquest is to be taken, but only land to be delibered, or seisin had, or goods to be sold, &c. which are but matters in fait, these are good although that the Writ be not returned.

If upon a Capias to arrest one, the Sheriff shall execute it, and shall not return it, he is punishable; for that the Capias is conditional, by these words, Ita quod habeas corpus ejus hic tali die, &c. But in an Habere facias seisinam, the Writ is to put the party in seisin without any conditional words; and therefore though he return not the Writ, the Sheriff is excusable. 16.H.7.14.

Upon a second Deliverance if the Sheriff shall deliver the Cattel to the Plaintiff, and shall not return the Writ, he is punishable. See hic cap.73.

13 H.7.1. Upon a Fieri facias, &c. if the Sheriff levieth the money or debt, but neither returneth the Writ, nor payeth the money to the Plaintiff, he is chargeable to the Plaintiff in an action of account, &c. and to the Defendant in action of Trespass. But if the Sheriff had payed the money to the Plaintiff, the execution had been good without return of the Writ, Co.5. 90. As also the Sheriff had been without danger to be sued either by the Plaintiff or Defendant.

And so note a difference betwen a Capias in process, and a Capias ad satisfaciendum: sc. if the Capias in process be not returned, the arrest is tortious; but if the Capias ad satisfaciendum be not returned, yet it is good, if the Execution be duly done, and the Plaintiff satisfied.

Co.5 90. Note also, if the Sheriff upon a Fieri facias shall execute the Writ, and levy the debt, but shall neither return the Writ, nor pay the money to the Plaintiff, yet first the levying of the Debt was lawfull, and the Defendant could not resist the Sheriff therein: Secondly, the Plaintiff may have a new Execution against the Defendant, and the Defendant is left to his action against the Sheriff: Thirdly, the sale of the goods (by the Sheriff) by force of the Fieri facias is good; and such as shall so buy the goods may lawfully enjoy them. And where the words of the Writ of Fieri facias be, Ita quod habeas denarios, &c. they are but words of commandment to the Sheriff to make return, the which if he doth not, he shall be amerced therefore; but yet the execution shall stand in its force. Fitz.Scire Fac.120. *Amerce.*

In an action of Disceit against the Sheriff, for that the party was outlawed at the Suit of the Plaintiff, and that the Sheriff (then Defendant) did not return the Writ, to the dammage of the Plaintiff, &c. the Sheriff pleaded that he had sent the Writ by A. B. his servant, towards the Court, and that one of them which were named

Le briefe eſloine.

med in the Exigent did rob and take away the ſame Writ from his ſaid ſervant by the High-way, and it was holden to be no plea, but the action againſt the Sheriff to be maintenable. 41. aſſ.pl.12. Br. Action ſur le caſe 121.

But note that in this former Caſe the Writ which was taken away from the Sheriffs ſervant, was through the default of the Sheriff; for it was taken away by one of the perſons which were outlawed, whom the Sheriff ought to have taken and kept in priſon, &c. Br.Bar.68.

The head and chief officer or officers of every of the Kings Courts of revenue, being of Record, ſhall have power and authority to ſet and aſſeſſe reaſonable Fines and amerciaments upon any Sheriff, for not returning, or miſreturning of any Writ to them directed and delivered out of any of the ſame Courts, touching or concerning the levying or anſwering of any Iſſues, Rents, or Revenues, or of any Debt due to the King, &c. 7.E.6.c.1.

If any Writ of Proclamation (upon any Exigent) directed to any of the Sheriffs of any of the twelve Shires in Wales, or Counties Palatine, &c. be delivered to any of the ſaid Sheriffs, or to his Deputy, and the ſame Sheriff do not make true Return thereof into ſuch Court out of the which the ſaid Writ of Proclamation ſhall be awarded, he ſhall forfeit for every default of non-return to the King and Informer five pound, &c. 1.Ed.6.cap.10. & 5.E.6.c.26.

If any ſuch Writ or Writs of Proclamation directed to the Biſhop or Chancellor of the Biſhoprick of Durham, or County Palatine, be delivered unto any of the ſaid Biſhops for the time being, or (during the vacation of the ſaid Biſhoprick) to the Chancellor of the ſaid County Palatine, for the time being, or to his, or their Deputy, or Deputies in manner and form aforeſaid, and the ſame Biſhop for the time being, or (during the vacation of the ſaid Biſhoprick) the ſaid Chancellor of the ſaid County Palatine for the time being, do not make true return of every ſuch Writ and Writs of Proclamation to them directed into ſuch Court and Courts, out of which the ſaid Writ or Writs of Proclamation ſhall be awarded; for every ſuch default of non Return, every ſuch Biſhop for the time being, and (during the vacation of the ſaid See) the ſaid Chancellor for the time being, ſo failing to make due Return, ſhall forfeit 5.l. to the King and Informer. 31.El.ca.9.

And yet note that there be ſome Writs which need not to be Returned; As upon a Recovery in a Quare Impedit, a Writ is awarded to the Biſhop, &c. to remove the incumbent, &c. this Writ is not returnable, ut dicitur. Dyer 260.

So upon a Recovery in a Quare Impedit, a Writ is awarded to the Biſhop, &c. to admit the Clerk of the Plaintiff. Dyer 350.

Alſo the Writ de Returno habendo is not Returnable, Fitz. Replev. 3.

Alſo the Writ de vi Laica removenda, may be made Returnable, or not Returnable, Fitz. 54.

Alſo the Writ of Treſpaſs, which is Miſcountiel, is not Returnable, Fitz. 85.g. And ſo of other Miſcountiel Writs. See hic cap.113.

The Writ de Habere facias ſeiſinan, is not Returnable, *t'me del ley. Tit Habere fac.ſeiſin.* Tamen vide hic cap.63. *divers Retorn de ceo.*

And ſo in other Caſes, except the Writ or Precept directed to the Sheriff requireth it, the Sheriff needeth not to make Return. Finch. 229.

Note that if the Writ be Returnable, the day of the Return is appointed in the Writ. Finch. 237.

Alſo

Alſo note, that it is no good Return for the Sheriff, that the party will not pay him his Fee (or coſts, or charges) for executing the Proces, and therefore he did not execute the Writ, or did not ſerve the Writ. 34. H.6. Br. Ret.10.

The Biſhop is not bound to award his Inquiry of a Jure patronatus, (where the Church is Litigious) but where the party or his Clerk ſhall require it, and that at the coſts of the party, or of his Clerk; for that he is a Judge in this Caſe, and therefore he is not to do it at his own coſts and charges; but contrariwiſe where he is an officer; for there when the Court writeth to him to certifie Baſtardy or Matrimony, or the like, he is to do that at his own coſts and charges.

7.H.6.32. 8.H.6.3. Br.46. Note that in ſome Caſes, although the Sheriff ſerveth not, or executeth not the proces, but excuſeth it by his return, it is good. As

1 In a Replevin the Sheriff returneth that the defendant claimeth property. Br.46.Fitz.77.c.

So in a Writ de Nativo habendo, if the villain alledge to the Sheriff that he is free, and the Sheriff returneth this. Fitz.77.

Ibid. And ſo of other impediments which ſhall interrupt the Sheriff to make his return, or take the party.

2 The Sheriffs of London return their cuſtom. See Br. Cuſtom.23. & Retorn.40.& 46.& Fitz.Ret.7.& hic c.73.

3 The Sheriff of Cheſter, or of any other County Palatine, return that they have a County Palatine within themſelves, &c. Br.46.

Ibid. 4 Alſo where the Sheriff returneth Mandavi ballivo libertatis qui nullum dedit reponſum, &c. here although the Sheriff ſerved not, or executed not the Writ himſelf, but excuſeth it by ſuch his return, ſhewing thereby why he hath not ſerved it, yet it is good.

So where the Sheriff retorneth Carde.

So where the Sheriff retorneth that the Plaintiff Non invenit plegios de proſequendo.

CAP. 39.

Return de Mandavi ballivo.

AS the Sheriff is the immediate officer of the King, and his Courts, to execute all Writs and Proces, ſo to him all their Writs ſhall be directed, although it be of a matter or thing done within a liberty or franchiſe, in which caſe the Sheriff muſt write or ſend his Precept to the Bayliff of the liberty, who muſt ſerve and execute the ſame (as ſervant to the Sheriff) and muſt make anſwer (or retorn) thereof to the Sheriff; but the Sheriff himſelf muſt make the retorne of the Writ into the Court. 2.H.6.f.7. Finch.52.

And yet in a Writ of Rediſſeiſin, and in a Writ to enquire of waſte, and ſuch other Writs wherein the Sheriff is made Judge of the cauſe, there if the Sheriff ſhall write to the Bayliff of the liberty to execute the ſame, the Sheriff ſhall be amerced; for the Sheriff in ſuch caſes muſt enter the liberty, and execute ſuch Writs himſelf, and muſt not retorne Mandavi ballivo libertatis: And ſo in other caſes, as where the King is a party, &c. See hic c.40.& 122.

For the forms of the Sheriffs Precepts or Warrants, to be made to the Bayliff of the liberty, they are to be like to thoſe which are made by

by the Sheriff to his other Bayliffs (which ſee hic c.) ſaying that where thoſe are directed Ballivo hundred. de R. &c. theſe are directed Ballivo Libertatis de R. &c.

Now for the manner of theſe Returns de Mandavi ballivo libertatis, &c.

The Sheriff returneth Mandavi ballivo libertatis, &c. he ſhall do well to ſhew cauſe (in ſuch returne) ſc. Eo quod pred. terr. & tenementa ſunt infra libertatem de, &c. And yet without cauſe ſhewed, ſuch a returne was allowed to be good. 1. H. 6. Fitz. Ret. 2.

The Sheriff returneth Mandavi I. B. ballivo libertatis de E. cui executio iſtius brevis pertin. &c. whereas he ſhould habe returned, quod ballivus habet retorna omnium brevium, & executio eorundem, and it was moved that the Sheriff ſhould habe been amerced.

Mandavi B. ballivo honoris de T. parcel ducatus Lancaſtr. qui habet plenum returnum omnium brevium & executiones eorundem infra libertatem pred. & cui executio brevis illius totaliter reſtabat faciend. eo quod nulla executio inde in balliva mea extra libertatem pred. per me fieri potuit. libr. Intr. 262.

The Sheriff returneth mandavi A. D. ballivo libertatis Ducatus Lanc' &c. qui habet retorna omnium brevium infra libertatem prædictam, &c. Exception was taken againſt the return, for that it was not ballivo libertatis Ducis Lanc' (for that the Dutchy hath no capacity to habe a liberty) but yet it was holden a good return: And ſo mandavi ballivo libertatis ſancti *Edmundi* de Burie, and mandavi ballivo libertatis Ducis Lanc. and the like are good returns. Fitz. Ret. 24.

If the Sheriff ſhall returne Mandavi ballivo libertatis, and ſhall not therein ſet down and returne the proper name of the Bayliff of the liberty, it is not good; for that ſuch bayliff is to be amerced for his default, which cannot be except his name be known to the Court; and his name cannot otherwiſe be known to the Court then by the Sheriffs returne. Mich. 18. Jacobi Regis: And yet ſee 3. H. 6. Fitz. Ret. 3. if the bayliff in his returne hath certified or ſubſcribed his name, the Court hath thereby ſufficient knowledge, &c.

Where the Sheriff returneth mandavi ballivo libertatis de S. and doth not ſhew to whom he is bayliff, or whoſe the liberty is, ſc. ballivo. I. D. libertatis ſuæ de S. yet it was holden to be a good return by three Juſtices in 1. H. 6. but there Hales Juſtice held the contrary, ſc. that the Sheriff in his return ought to ſhew who is Lord of the franchiſe. See 9. E. 4. 19. Br. 54. & Fitz. Ret. 2. 4. 31.

The Sheriff returned mandavi tali, &c. qui habet retorna omnium brevium & executionem eorundem per chartam Regis. And for that the bayliff was not returned bayliff of ſome franchiſe, or Lord, the Sheriff was amerced; quære and ſee the Statute of Weſtm. 2. c. 39.

The Sheriff returned Mandavi ballivo libertatis, &c. and for that he did not returne further that he had nothing within his bayliwick, he was therefore amerced. 47. E. 3. f. 2.

If the Sheriff ſhall return mandavi ballivo libertatis de D. who did nothing therein, whereas there is no ſuch liberty within the county, or nameth a liberty which hath not return of Writs, the Sheriff ſhall be puniſhed as a diſinheriter of the King and his Crown: And therefore it is ordained by the Statute of 13. E. 1. c. 39. (as a thing needfull) for the Sheriff to have out of the treaſury of the Exchequer a note of all the liberties within his County that habe return of Writs. Vide 13. E. 1. c. 39. Fitz. Ret. 40.

Mr. Bracton libro. 5. c. 32. ſaith thus, Excuſatur vicecomes multoties propter

propter libertatem & impotentiam, quod libertates ſine warranto ingredi non poſſit, niſi per defectum eorum qui libertates habent & retorna brevium per vicecom. & unde ſi preceptum ſit vicecom. quod attachiet talem qui manens ſi infra hujuſmodi libertates, cum vicecomes ingredi non poſſit, faciat vicecomes retorne brevium ballivis pred libertatis, & precipiat ballivis quod tale preceptum Domini Regis exequantur, quo caſu aut ipſi ballivi exequantur preceptum Domini Regis, aut nihil inde faciunt; Si autem illud plene fuerint executi, per hoc liberabitur vicecomes. Si autem nihil inde fecerint, ſufficiat ad excuſationem vicecomitis, quod mandet Juſtic. quod preceptum ſit ballivis; Quo caſu cum ballivi inde nihil fecerint, propter defectum eorum precipietur vicecom. quod non omittat propter libertatem talem, quin attachiet, &c. talem quod ſit, &c. Et ſic poterit vicecomes libertates ingredi cum warrantum habuerit, quod alias ei non liceret.

Et in tiel caſes breif iſſera al vie. de ent. le liberty, de executor le Proces, &c. & de Summoner le Bayliffs del liberty quod ſint coram Juſtic. reſponſur. quare preceptum Domini Regis non fuit execut. Et ſi forte cum vicecomes ingredi voluerit, hoc non ei permittatur propter potentiam ballivorum libertatis, precip. (ut prius) vicecomes quod non omittat propter libertatem talem, quin attichiet, &c. talem in forma predicta. Et ſi aliquem invenerit reſiſtentem, aſſumptis ſecum (ſi opus fuerit) militibus & liberis hominibus de com. ad ſufficientiam, capiat corpore hominum reſiſtentium, & illos in priſona ſalvo cuſtodiat, donec Dominus Rex inde preciperit voluntatem ſuam; & nihilominus Dominus libertatis attachietur quod ſit ad predictum diem ad defendendum ſe, ſi poſſit, de predicta tranſgreſſione, ad quam quidem ſi advocaverit, vel defendere non poſſit, Capiatur illa libertas in manum Domini Regis pro voluntate Domini Regis detinenda, quia libertatem meretur amittere qui permiſſa ſibi abutitur poteſtate. Bracton ibid.

This then being the ancient Common Law of the land, was afterwards (moſt of it) confirmed by the Statute of Weſtm. 2. (which Statute was made after the time that Mr. Bracton wrote) the effect of which Statute of Weſtm. 2. to this purpoſe, is as followeth:

13. Ed. 1. 09. If the Sheriff doth return that he had directeth his precept to the bayliffs of ſome liberty (which indeed have return of Writs) which did nothing therein, then the Plaintiff ſhall have another Writ whereby the Sheriff ſhall be commanded that he ſhall not omit for any liberty aforeſaid, but ſhall execute the Kings commandement or Writ himſelf, and that he ſhall warn the bayliffs to whom he returned the Writ, that they ſhall appear at a day contained in the Writ, to anſwer why they did not execute the Kings precept; And if they do appear at the day, and do acquit themſelves, that the Writ was not returned nor no precept from the Sheriff made unto them, the Sheriff ſhall be forthwith condemned to the Lord of the ſame liberty, and likewiſe to the party grieved by delay, to reſtore him dammages: but if the bayliffs do not appear, and do not acquit themſelves in form aforeſaid in every judicial Writ, ſo long as that ſuit dependeth, the Sheriff ſhall be commanded that he ſpare for no liberty, &c. Weſtm. 12. 13. Ed. 1. 39.

Non omittas.

Mandavi ballivo libertatis.

12. E. 1. 5. There ſhall be an Indenture made betwixt the Bayliff of the franchiſe (which hath full return of Writs) by his proper name, and the Sheriff by his proper name, of every returne which the Bayliff of any ſuch franchiſe ſhall make to the Sheriff: And if the Sheriff do change the return ſo delivered unto him by Indenture, and thereof be atteinted at the ſuit of the Lord of the ſame franchiſe from whence he hath received

Indenture between the Sheriff and bayliff.

received the ſaid return (if the Lord have received any dammage, or if his franchiſe be impaired) and at the ſuit of the party which hath received loſs by this means, he ſhall be puniſhed by the King for his falſe return, and alſo ſhall yield to the Lord and the party double dammages. Stat. Ebor. 12. E. 2. c. 5.

Vnc. ſi le vic. retorne aut perſons (in un Pannell) q. le Bayliff del Franchiſe ad retorne a luy, le return del vic. ſee d'eſtre bon; mes le Bayliff del franchiſe pt. aver ſon action ſur le caſe envers le vic. in tiel caſe. 30. aſſ. 5. Br. Ret. 73.

In Aſſiſe, le vic. retorne pt. de ex. qx. le Bayliff del franchiſe retorne a luy & pt. de autres (contra al indentures perent. le Bayliff & luy) & per finch le vic. pt. retorne q. il voet; Abr. d'aſſ. 51. vide ibid. 93. *q. in Aſſiſe pt. de ters in franchiſe, ſi le vic. ft. tot. le Pannell, ce. bon. vuc. le ſig. del franchiſe pt. an action vers le vic. &c. Mes l'author dit entretes le vic. ſi le Bayliff ne ſoit bre. amye.*

The Sheriff returneth mandavi ballivo libertatis, &c. who ſerveth and executeth the proces in part, this is not good; for that the Sheriff himſelf muſt execute or ſerve and return all, or the Bayliff all. See 2. H. 4. 1. & 8. H. 4. 16. Fitz Ret. 41.

For the Sheriff cannot ſerve a Writ in part, and write to the Bayliff of a liberty to execute the other part, becauſe that the Writ is entire, and cannot be ſevered nor ſerved by two Miniſters or officers: And therefore if the Sheriff (upon the venire facias, or upon the Diſtring. Jurator. or habeas corpora Jurator.) ſhall retorne the Writ ſerved by himſelf, as to part of the Jurors, and as to the reſt, he ſhall retorne, Mandavi ballivo libertatis, &c. the Sheriff ſhall be amerced for ſuch his retorne. Abr. d'aſſ. 145. 19. H. 6. & 31. H. 6. Fitz retorn. 14, & 22.

Mes ſi le vic. ſur un Capias in det vers 3. retorne q. il ad priſe 2. & quant al anter il ad maunde al Bayliff del liberty, &c. qui nihil reſpondit, &c. ceo eſt bon retorne, per les Juſtices al Serjeants Jun. Ter. Trin. 7. E. 6. vide Fitz. Ret. 22. accord.

If an aſſiſe be brought of Tenements in two franchiſes, the Sheriff ſhall write to each Bayliff, and both of them ought to ſerve and execute it. Abr. d'aſſ. 93.

If an aſſiſe be brought of land within a franchiſe, and the franchiſe extends into another hundred, the Sheriff ſhall write as well to the Bayliff of the hundred, as to the Bayliff of the franchiſe, &c. 22. aſſ. Abr. d'aſſ. 93.

A venire fac. was returned ſerved by the Sheriff, and upon the Habeas Corpora the ſame Sheriff returned Mandavi ballivo libertatis, and this retorne was holden to be good by all the Juſtices: for if the Sheriff had done wrong at the firſt, yet he may amend it when he will; And alſo it may be that there was no franchiſe at the time of the venire fac. returned, and that there was at the time of the Habeas Corpora: Alſo it may be that the Jurors were then out of the franchiſe, and after at the time of the Habeas Corpora were within the franchiſe: Alſo it may be that the Jurors were ſufficient within the franchiſe, and not without. Vide 26. H. 6. Fitz. Ret. 19. ibid. 22. contr. But the Sheriff in his retorne muſt certifie and ſhew ſome cauſe, &c. See Abr. d'aſſ. 144, 145. hic poſtea & 8. R. 2. Fitz. Chall. 176.

And in a Præcipe quod reddat of lands within a franchiſe, the Sheriff was amerced for that he returned mandavi ballivo libertatis, &c. who took the pledges and made the ſummons, &c. for that the Sheriff himſelf ought to have taken the pledges de proſequend. although he cannot ſerve the ſummons; for firſt he ought to take pledges, and then ſhall 14. H. 6. 3. Br. Ret. 61. Abr. d'aſſ. 93.

ſhall make his Mandavit to the Bayliff, &c. and ſo the Sheriff may return the pledges de proſequendo, and the Bayliff of the Franchiſe ſhall ſerve and execute all the reſt of the Writ. 21. Hen. 7. fol. 14. hic cap. 52.

So where the iſſue is of land part guildable, and part in a franchiſe, the Jury ſhall be returned part by the Sheriff, and part by the Bailiff of the franchiſe, and ſo they may joyn in the return; But the Diſtreſs ſhall be by the Sheriff only, if the Bayliff of the franchiſe ſhall be ſlack. *Jurie retorn part per vic' part per bailiff.*

Br. 50. Vide Abr. d'aſſ. 93. & 145.

Tamen quere, ceo quant parcel de le Pannell eſt fait per le Bayliff, & part per le vic. il. ſont deux Pannels: Auxi nul brief pt. eſtre retorne per deux Miniſters (ut ſuper) & per ceo ſemble que le vicount fera tout, ou le Bayliff tout. Abr. d'aſſ. 51. & 145. Fitz. Ret. 14. & 22.

Aſſiſe fuit part de tenements in 2. villes, & lun del dits villes fuit deins un franchiſe, & l'ant in Guildable, & fuit doubt comt. ceo bre. ſerra icy execute; ces icy deux miſchiefs pt. enſuer. ſc. 1. Ceux de franchiſe ne pot. fes le view, per commandement de Bayliff, de ters hors del franchiſe. 2. Poſt enſuer q. le Bayliff del Franchiſe ne unques ſerver bre. Ces home pt. touts foits mitter en le bre. part del terr. Guildable, &c. Vide 18. E. 3. fol. Abr. d'aſſ. 94.

Nota q. tiel part del County que eſt contributary inter eux meſnes a payer tribute or common charges, eſt appell le Guildable; & ſi aſcun ſpecial liberty la ſoit, ceo eſt appell le franchiſe. Co. 8. 125.

Et ceo parol Guilde, eſt un brotherhood ſociety, on Company incorporate. Co. ibid. & Minſh.

38. aſſ. p. 13. Br. Action ſur le caſe 120. The Sheriff maketh his Precept or Warrant to one who is no Bayliff of the franchiſe, who returned the pannell, by reaſon whereof it was quaſhed, to the damage of the Plaintiff, &c. who brought his action of the caſe againſt the Sheriff, and recovered his damages, notwithſtanding that this was done by the advice of the friends of the plaintiff, and ſo pleaded; and beſides the Sheriff ſhall be amerced therefore. *Warrant al un que ne baliff del franchiſe.*

The Sheriff (upon a Replevin) returneth Mandavi ballivo libertatis, &c. Qui mihi nullum dedit reſponſum, or returns that the Bayliff will not make deliverance, &c. theſe are no good returns, for the Sheriff (ex officio as it ſeemeth in ſuch caſes) ought himſelf to have entred the franchiſe, and to have made deliverance of the cattell, &c. Fitz. 68. f. Regiſter. 81. b. *Nullum dedit reſponſum.*

Upon a Diſtringas for debt, the Sheriff returned Mandavi ballivo, &c. qui nullum dedit reſponſ. And for that the Sheriff did not return, Quod null. habet exitus in ball. ſua, therefore he was amerced. 47. E. 3. f. 3. Br. 23.

Note that whereſoever the return of the Writ pertaineth to the Bayliff of a Liberty, yet if the Sheriff doth it himſelf, it is well enough. 3. H. 7. 2. b. But the Lord of the liberty may have his action *ſes le caſe* againſt the Sheriff, &c. Finch. 52.

Si aſſiſe ſoit part de ters deins franchiſe, le vic. pt. feſ. tout le Pannell ſil voet, & il eſt aſſets bon, & n'eſt auter doubt ſinon per l'action le ſig. del. franchiſe vers le vic. Et per ceo l'author dit) Entrettes le vic. ſi le Bayliff ne ſoit voſtre amye. Abr. d'aſſ. 93.

Alſo note where the Sheriff ſerveth the proces once of a thing locall, as in a præcipe of land, &c. he cannot after return Mandavi ballivo, &c. yet the Sheriff ought to take the pledges de proſequendo, and then may make his Mandavit, &c. ut ſuper. 5. H. 7. Br. 89.

Yea whereſoever the Sheriff hath ſerved the firſt Writ, he cannot (by ſome opinions) write after to the Bayliff of the franchiſe, except

in his return he sheweth some special cause. Vide Abr. d'ass. 144, 145.

But in the former Book of 5. H. 7. Keble taketh this diversity. sc. between a thing permanent, and a thing removeable; for of a thing permanent, as in a Precipe of Land, if the Sheriff hath served the first Process, he shall do ill, if afterwards he shall make his precept to the Bailiff of the Liberty; for by his serving of the first Process he hath affirmed the Land to be within his Jurisdiction: But of a thing removable, as a Tresspas, or Debt, he may serve the process; and when that cometh to the Capias, he may make his precept to the Bailiff of the Liberty, to take the body, for that the body is removable, which diversity was affirmed by the whole Court.

CAP. 40.

Where the Sheriff is to enter the Franchise.

All Original Writs are to be directed to the Sheriff of the County (as is shewed here before, cap. 20. & 39.) yea although it be of a matter within a Franchise, in which case the Sheriff shall direct his precept to the Bailiff of the Franchise, who is to serve and execute the same; But the Sheriff must make the Return of the Writ into the Court. 2. H. 6. fol. 7.

Roy Partie. And yet note that whersoever the King is a party, as in every Felony, or suspition of Felony, or otherwise in any action, the Sheriff, ex Officio, is to enter the Franchise, and to execute and serve the Process himself, and is not to write to the Bailiff of the Franchise. Br. Franch. 18. 31. 38. ass. 19. Br. Retorn. 78. Co. 5. 92. And yet if this clause, Licet fuerimus pars be in the Charter, then it seemeth otherwise, Plo. 243. Br. Fran. 31.

Ou vicont est Judge. In a Writ to enquire of Waste, the Sheriff returned Mandavi ballivo libertatis, &c. qui nullum dedit respons. and the Sheriff was amerced; for that in this Writ he ought himself to have entred the Franchise; and to have executed the Writ ex officio, and without a Non omittas, &c. for that he is both a Judge and an Officer by the Stat. which is, quod accedat ad locum vestatum, &c. & ibi facere inquisition. &c. So in Redisseisin; and in a Writ of Ward, &c. See more hic postea. Fitz. Retor. 52, 53. & 92.

Sur default le Bailiff. Also in other cases, upon the default of the Bailiff of the Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, or else he shall be amerced; As where the Sheriff mandavit ballivo libertatis, and the Bailiff nullum dedit respons. See the Statute 13. E. 1. ca. 39. & hic postea tit. Bailiffs of Franchises. So where the Bailiff is a party. Fitz. 68. f. Marlebr. c. 21. N. br. 44.

So where a Distress is taken within a Franchise, and the Bayliff of the Franchise will not deliver them, then the Sheriff upon complaint to him made, may deliver them. Stat. Marlebr. cap. 21. N. Br. 44.

But in the former Cases where the Bailiff of the Franchise maketh default, it seemeth safest for the Sheriff to have a Writ with a Non omittas therein directed to him, commanding him to enter the Franchise, and to make execution of the Writ, before he may enter the

the Franchiſe to execute the proceſs; for the words of the Statute of 13. E. 1. 39. are that the Sheriff ſhall be commanded, quod non omittat propter aliquam libertatem, &c. Sæ Fitz. 68. f. 69. b. & 74. a. & 266. d. & P. Retor. 3. & Bracton hic. c. 39.

And this Statute of Weſtm. 2. c. 39. (made ann. 13. Ed. 1.) doth give a Non omittas propter libertatem.

But by the Statute of Marlbr. cap. 21. & Weſtm. 1. cap. 17. (in fine) upon the default of the Bailiff, the Sheriff ought preſently to enter the Franchiſe and make deliverance of the Diſtreſs taken, &c. Fitz. 68. f.

Iſſint ſi plee de Withernam ſoit in le County Court ſine breve, & le vic. maunde al Bayliff de Franchiſe de fair deliverance, & le Bayliff fait riens adonq; le vic poteſt ex Officio (ſine breve) enter in le Franchiſe, & fer deliverance del Cattel. Fitz 68. f. & Regiſt. 81, 82. & Nat. Br. 43.

Si le vic. retorna quod propter libertatem aliquam non poſſit hujuſmodi averia Replegiare, tunc fiat breve de non omittas propter Libertatem. Regiſt. 82.

Mez vide ibid. q. ceo neſt pas tenuc in lun caſe ne l'aut ſans brief.

La eſt in le Regiſtr. un non Omittas propter Libertatem, quin ingrediar. & Corpus ejus Capias, & in priſona donec debitum ſatisfecerit, ſalvo Cuſtodias, &c. fol. 151. b.

Un non omittas propter lib. quin. ingred. Et Capias in Withernam, donec, &c. *cum pluries.* fol. 82.

Un non omittas propter lib. quin omnia bona & Catalla, & medietatem terrar. &c. ſine dilatione liberari fac. per rationabile precium, &c. Reg. Indic. fol. 5. b.

Alſo where the thing is Entire. Sæ hic cap. 122.

Upon an extent of a Stat. Merchant, if the Sheriff returneth that he directed his precept to the Bayliff of ſome Franchiſe, he ſhall be puniſhed, &c. Stat. de Mercatoribus hic cap. 24. whereby it appeareth that the Sheriff is to enter the Franchiſe, and to execute it himſelf, upon the body, lands, or goods of the Conuſor being within the Franchiſe.

Alſo where the Bayliff of the Franchiſe maketh default, &c. and that a Non omittas be thereupon directed to the Sheriff, the Sheriff ſhall not only thereupon enter himſelf into the Franchiſe, and execute the Kings Writ, but the Sheriff alſo ſhall warn the Bayliff of the Franchiſe, that he be before the Juſtices at the day contained in the Writ; and if he come not and excuſe himſelf, then all Writs Judicials iſſuing during the ſame Plea, ſhall be Writs de Non omittas, &c. and the Sheriff ſhall make execution of them, hanging that Plea. T'mes del ley.

But in other Caſes where a man hath Liberty to return Writs, and to execute them, &c. if there the Sheriff or his Officer ſhall enter the Liberty without a Non omittas, and execute any proceſs there, although the ſame be good, for that the Sheriff is the immediate Officer, yet the Lord of the Liberty ſhall have his Action of the caſe againſt him. Fitz. 95. b. Sæ hic poſtea, cap. 112.

Bailiff of Fee.

Where there is a Bailiff of Fee, the Sheriff ſhall not return Mandavi Ballivo (as it ſeemeth) nor write to the Bailiff of Fee, as to a Bailiff of a Franchiſe or Liberty; but he ſhall ſend his precept to him as to the Bailiff of Guildable: and the Sheriff ſhall return his anſwer, or make his return, as if the Sheriff himſelf had ſerved the Proces, 27. Aſſ. 65. Br. Proc. 98.

and ſhall not in his return make mention of the Bailiff of Fée, as he ſhall do of the Bailiff of a Liberty, And yet note that this Bailiff is an Officer of Fée within this Precinct; ſo that if ſuch a Bailiff of Fée will not execute the proces, a Non omittas ſhall not go out to the Sheriff, &c.

CAP. 41.

In quel court.

ALl proces againſt any perſon, directed to the Sheriff, ought to be duly and truly executed, and returned into ſuch Courts out of the which ſuch proceſs ſhall be awarded. Sée hic cap. 23. the Form.

Mitter lour noſme al retorne.

The Sheriff (as alſo the Bailifs of Liberties which receive the Kings Writs returnable in his Court) ought to ſet their names to their return (ſc. their ſirnames and Chriſten names, Plo.63. a.) ſo that the Court may know of whom they took ſuch returns, if néed be: And this may ſéem to be by force of the Statute of 12. Ed.2.cap.5. Vide 8. H.6. Fitz. Retor. 8.

Et uncer dicitur que per le Common ley le vic. doit mitter ſon Noſme ſer chu. bre que il retorna, & que le dit Stat. 12. E. 2. done penalty vers le vic. ſil ne mitter ſon nom. al retorne: mez ceo ſtat. ne foit le ley que le vic. doit retorne ceo, que fuit le ley deut.

And if any Sheriff or Bailiff do leave out his name in his return, they ſhall be grievouſly amerced, by force of the ſaid Statute of 12. E. 2. Alſo by the opinion of Jenny 9. E. 4. fol. 20. a Return without the Sheriffs name thereto, is void; and an Utlary was reverſed for ſuch cauſe, 26. H. 8. 3. Thel. 385. Sée Plo. 63. a. that the Writs are directed to the Sheriff of ſuch a County generally, without naming his name, but he muſt put his name to the return; and this was a common difference holden at Mootes in Court and Chancery. Br. 48. 54. 81. 129.

Ieo aye view le re pt. d'un caſe in le Common Bank, An. 29. Eliz. On ſur Utlary fuit mr. que le Capias fuit retorne per les vic de London *in ceux pol. viz. Reſponſio* I. D. *&* Henrici Billingſly *(ſur le dorſe del Capias) ſans dire Vicecom. Et ceo fuit alledge al Court per Error, per reverſe le utlary per ceo que icy u°ont m're que il fuer vic. Et un direct Preſident ſont lye.* in 16. H. 7. Rotul.

Lon un utlage in action de Det, le vic. interleſſe ſon nom. on addition de vic. ſur le retorn del Exigit, per que le utlary fuit reverſe; & iſſint ſemble al Iuſtices in le caſe ſupra, mez. il'z. voilent ex adviſer quia per le Royne.

If the Sheriff ſhall not put his name to the return of a Jury, or ſhall return the Venire fac. without any indorſement, theſe are erroneous, and not to be amended. Co. 8. 162, 163. & 5. 41. 42.

Theſe Returnes are to be indorſed on the back of the Writ; And yet

yet if that be made on the inner ſide of the Writ, it is good enough.

If one returneth a Writ in and by the name of the Sheriff who is no Sheriff, this is erronious by Gaſcoyne, 21. Hen. 4. *& ne ſerra amend.*

On ſerra amend.

But note that the return of the Sheriff being erronious, or not good, yet it may be amended by the Court in divers Cales; yea although ſuch return were made in another Sheriffs time, 22. H. 6. 45. 33. H. 6. 47, 37. H. 6. 12. & 2. H. 5. 8. Br. 58.

And the Court may cauſe the old Sheriff (in whoſe time ſuch return was made) or his Undersheriff, or his Clerk or Deputy to amend the ſame; or any other Clerk of the place. Fitz. Amendement. 40. 33. H. 6. 47.

As where the Sheriff by negligence ſhall omit any of the Jurors in the Diſtringas, which were in the Venire facias, or ſhall return T.B. for A.B. Or ſhall return octo tales for decem tales; theſe ſhall be amended by the Sheriff upon his examination in Court.

The Sheriff having returned too ſmall iſſues, prayed to amend his return, and it was ſuffered. Br. iſſues 1.

If the Sheriff do return ſmaller Iſſues upon any Diſtreſs, then the value of the Lands of the Defendant do extend to, between the Teſte and the Return of the ſame, *Le Plaintiff part cauſe le vic. dec. Amerc. & called into Court de amend ſes Iſſues per advantage le Roy.*

Alſo if the Sheriff ſhall ſubſcribe his name to the Return, omitting this word, *Vicecomes*, yet this is amendable, per Curiam. Mich. 13. Jacobi Regis. Vide Stat. 21. Jac. cap. 13.

See plus Dyer 64. & hic cap. 36.

Mes apres verdict ſur iſſue trie &c. la ſont divers defaults in retorne le vicont, queux ne ſont amendable. Vide hic poſtea Retorne de Venire facias.

Uncore per ſtat. 18. El. ca. 13. *imperfect ou inſufficient retornes del vic. ſont remedie & amendable.*

Mez ſi ſoit in queſtion le ql. le vic. fiſt tiel retorne, ou n'ey, ceo ſerra trye per le vic. 9. H. 4. 1. Co. 9. 31.

Auxi retorne fait per le Southvic. ſi ſoit deny, ceo ſerra trye per le Southvic. Et le vic. ne poet ne diſavower ceo, ſil confeſs luy d'eſtre ſon Southvic. 10. H. 4. 7. Co. 9, 31.

CAP. 42.

Where a man may Averr againſt the Sheriffs Return, and where not.

PUr ceo que le vic. eſt un Officer depute per le Ley, al Roy & ſes Courts, home ne ſerra admit de averrer directement encounters le Retorne del Vic. ſinon in aſcun ſpecial Cales: Et le reaſon eſt, per ceo q. lon Juſtice eſt d'eſtre adminiſter & executé, le Roy, & tiels queux ſont ſes Judges (& deſouth luy ſont de adminiſter Juſtice) doient neceſſariment mitter un truſt & confidence in aſcun perſon: Et ſi choſcun hom. puiſſoit Averr enconter ceo

q. le

q. le vic. fera, donque Juſtice ne unq. ſerra execute, mes ſerra touts foits, ou ſepius, d'lay, &c. Et vuc' a contrario per ceo q. viſcounts & leur officers ont ſepius eſtre trove faulty de leur parts, in feſan. faux Retornes al breifs le Roy, &c. le quel pt. ariſe in part per corruption, & in pt. per lour negligence & remiſſneſs: Et auxi per ceo q. tiels faux Retornes fuer ſovent foits valde miſchevous a les ſubjects, ideo les ſtatutes & leyes de ceo Realm, ont in aſcun caſes, allow homes de averm. encounter le Retorne del vic.

And firſt by the Statute of Weſtm. 2. c. 39. upon a Diſtringas againſt the party; the plaintiff may aver that the Sheriff hath returned two ſmall iſſues, or that the Sheriff might have returned greater iſſues upon the defendant: but (by ſome opinions) upon a Diſtringas Jurator, if that the Sheriff ſhall return two ſmall iſſues, that is out of the Statute. 10. H. 7. f. 11. See 20. H. 6. f. 26. 13. E. 1.

By the Statute made 1. E. 3. c. 5. A man ſhall have an averment againſt the falſe return of Bayliffs of franchiſes which have return of Writs, and ſhall recover, as well againſt them as againſt the Sheriff, as well of ſmall iſſues returned, as in other caſes, ſo that it be not prejudicial to the Lords, &c. Dr. & St. 134. 5. H. 7. f. 27. 1. E. 3.

Sur Capias le vic' retorn Non eſt inventus, le plt. m're comt. le vic' fiſt precept al bayliff del franchiſe de prender le Corps, le q. luy Arreſt & deliver luy al vic' le ql. choſe il voet Averr. Mes per totam Curiam il n'avera ceſt Averm. encounter le Retorne del vic. ne in nul caſe, ſinon per trope petite iſſues per le ſtat. Ces ſi le vic' ad miſſait le plt. poet ſuer luy. &c. 2. H. 4. 14. Fitz. Averment. 17.

Vuc' proces vers vouchee, le vic. retorne le vouchee mort, le demandant poet averre que eſt in vie., per ſaver ſon inheritance, ſc. *le garranty.* Finch. 52. 14. E. 3.

Auxi home avera averment encounter retorne del vic' qt. le party aut. n'avera l'affeit de ſon ſuite, come ſur Cepi Corpus, retorne quod mortuus eſt in priſona. 3. E. 4. 20. Finch. 52.

Avirment contrary al return del vicount.

Sur Venire fac' *le vic' retorne* 24. *Jurat', & ſur le* Habeas Corpora *il retorne que*, 12. *de eux ſont morts, le Plaintiff avera averment que ſont in vic' encounter le retorne*, 20. E. 4. f. 11.

Sr. exigent le vic. retorne quod mortuus eſt, & le Contrary fuit Averr, ſc. *q. le party fuit in vie, & le vic. fuit Amercie per tiel faux retorne.* Liber. Intrac. f. 336.

In debt vers deux, al Capias le vic. retorne Cœpi Corpora *de ambideux &c. vuc. lun de eux fuit reſceive adire que l'ant. fuit mort, & abate le bre. non obſtant le Retorne.* 50. E. 3. 7.

Le plaintiff pria que le defendant in repleg' gager deliverance, & le defendant dit que ils deviont in pound overt, in default del plaintiff, & pria brief al vicount ſi conſtare poterit; *ſi le vic' ſur ceo br're retorne que ſont mort, le pl' poit averre le contrary, & averre,* Sicut alias 30. H. 6. 2.

Vicont Retorne Mandavi ballivo libertatis de N. *que ſic reſpondit, que auter foits le def. fuit commit. al prochein gaole per Auditors ſur ſon accounpt pur arrerages, & que il eſteant bailiff de ceo gaile luy ameſne al priſon, & il vient eins ſur* Cœpi corpus, *& dit que nul tiel account, & avera ceſt averment nient obſtant. le retorne del vic'* 28. E. 4. 5.

Q. le bre. fuit deliver.

Ich ſue br're de Nativo habendo, *le quel fuit deliver al vic' & puis le defendant ſua brief de* libertate probanda, &c. *& le vic' retorne que nul brief de* Nativo habendo *fuit deliver a luy & lauter averre le contr' & poet* 18. E. 4. 7.

Le vic' retorne ſur exigent, Quarto exactus, &c. Et quod non habuit tempus ad aliquem Com. ultra dictos quatuor Com. ad dictum I. ulterius exigendum: Et averment fuit priſe, que bre. de Allocat'. fr. deliver al vic.

de

de Recordo, & deux Counties fuer tenus apres, & iſſint le Retorne faux, & le vic' fuit fine per ceo Liber Intra. tit. Exigent. in Retorne div. 4.

Auxi vide per utlary de felony. M. 1. E. 3. f. 40. *Ou le vic' retorne le party utlage, & il aver. q. il ſe rend al Quintum Comitatum. Et le Court eſcria al Coroners deſtre appriſe de ceo.* Dyer 223.

Le vic' retorne ſur Exigent, *que* 4. Exactus, *& nient obſtant averment fuit priſe que fuit ut lage, & ceo fuit certifie per Coroners, & pur ceo le vic. fuit amerce al* 50. *markes*, 36. H. 6. 24. *Amerce al 50. markes.*

Home ne ſerra reſceive de traverſes directment le retorne del vic. Come ou le vic' retorne ſummons, ou Attachment, Reſcous, Non eſt inventus, & hujuſmodi, home ne dira q. Il ne fuit ſummon, ou q. il ne fr. Attache, ou que il ne fiſt Reſcous, ou q. le party fuit deins ſon Bayliwick; mes pt. dire ceo que eſtoiet ove le retorne del vic' Come adire, quod non ſummonitus fuit accordt. al ley, vel Nient attache per 15. *jours & tiel. que eſtoit ove le detorne del vic' ſans aſcun Contradiction.* 7. H. 7. 4. Br. Averment, &c. 16.

Et vnc' vide Dyer 212. *que ſi le vic' retorne Reſcous, le party avera Traverſe a ceo retorne, & hoc per force de ceo parol Convincatur, in le ſtat.* Weſtm. 2. c. 40. *que dit, & ſi forte vicecomes cum venerit reſiſtantiam invenerit, Certificet Curiam de nominibus*, &c. *Et ſi hujuſmodi reſiſtentes Convincantur, punientur*, &c. *quel parol Convincantur prove q. il poent aver. un Traverſe*, &c. Liber Intrac. f. 58.

Ou le vic' retorne Pledges de proſequendo, ou de Returno habendo. En Scire fac. *apres vers eux, ils ne ſerra reſceive adire que ils ne fuer. Pledges, ces ceo eſt directment contra al retorne del vic.*

Mes un poet avera averment in auter action vers retorne del vicount come in covenant le vicount retorn luy garniſh, vnc' in detinue poit averre le contrarie 11. H. 17.

5. E. 4. 1. *Nota un ne poet aver direct averment encounter retorn de vicount in meſme le action; mes in auter action poet; come in det vers bayliff de franchiſe pur eſcape dun retorn per le vicount que il ad priſe luy per warrant a luy direct ſur* Capias ad ſatisfaciend. *poet ore in ceſt action de det, averre que nul tiel warrant fuit a luy direct.* *Ne traverſer directment, ſinon in auter action.*

Iſſint in action ſur le caſe vers le vic' home avera direct averment encounter retorne del vic' in auter action. 5. E. 4. 2. Finch. 52.

3. E. 4 20. *Treſpas ſur Pone, biens fuer' retorne attache, & quant le def. appeare, il ad brief al vicount a deliver a luy ſes biens arere, & le vicount retorne que redeliveravit, icy le defendant ne poet averre le contr'. Meſme le ley in retorn de ſeiſin in dower, ne poet aver averment al contr' car le vicount eſt officer a que credence ſerra done, & c. mes ou un eſt ſans remedie, & deſtre diſinherite la eſt auter: come ſi le vicount in precipe vers un, retorn que il eſt mort, le demaundant poet averre que il eſt in vie: Iſſint poit dire nient attach per* 15. *jours, que neſt direct averment, mes ſur* habere facias ſeiſinam, *ſi le vicount retu'n* habere feci ſeiſinam, *lauter ne poit averre le contrarie*, 3. E. 4. 20. *Ou q. perſon inheritance ſa perde.*

Home navera averment directment encounter le retorn del vicount ſinon que ſon perſon eſt d'eſtre charge, ou que ſon inheritance a touts jours eſt deſtre perdus, & ne poit per le ley aver remedy de ſaver meſme le inheritance. 3. E. 4. 20. *Ou q. perſon d'ee. charge.*

Et ſic nota que home pt. traverſer directment (& aver encounter le Ret. del vic') in auter action.

Ou in meſme le action, qt. ſon inheritance, ou l'effect de ſon ſuite, ſerra perde, ou ſon perſon dee' charge.

Ou in favorem vite; vide Finch. 52. *que in action ſes caſe vers vicount, home avera direct averment encounter Retorn del vic'.*

Ou le vicount, ſur Capias, *retorne* Non eſt inventus, *home ne poet averment encounter ceſt retorne.* 2. H. 4. 15.

Ou

Ou ſur Corpus cum cauſa, *hors del common banke, le vic' retorne que le party eſt lye al peace (que eſt pur le roy) & nient obſtant que ſoit faux, ne pois aver averment in ceo brief, al contrarie.* 9. H. 6. 44.

Ou le vic' retorne Mandavi ballivo libertatis Archiep. Ebor. *que retorne ſumm', le defendant ne poet averre que le terre eſt deins le franchiſe de Richmond.* 34. H. 6. 3.

Brief de Diſceit eſt retorne per vic', & le def. averre que les ſummoners ore retorne ne fuer' les ſumm' in le Præcipe, *& ne poet aver ceſt averment encounter le retorne del vic'.* 5. E. 4. 7. & 33. H. 6. 11.

Ou vic' retorne un utlage, ne poet averre que ne fuit Exactus forſque *treis ou quatuor foits (ou que ne fuit proclaime forſq; 3. ou 4. foits) mes pur ſon remedie eſt daver ſon action ſur le caſe vers le vic',* 10. H. 7. 23. Br. Action ſur le caſe 122. See hic tit. Proclam.

Mes in appeal le partie poet aver tiel averment. 10. H. 7. 23. *ces in favorem vite.* Dyer 349.

In favorem vite. *In breif de Enquir' de waſt, ac in brief de Rediſſeiſin le vic. eſt Judge, & pur ceo in cenx briefs ſi le vic. fait faux retorne, le partie ne aver averment encounter ſon retorne: ne le partie ne poet averre que le vic. ne ala al lieu,* &c. 10. H. 7. 28. & Br. Rediſſ. 4. 6. 30. aſſ. p. 35. 7. H. 7. 4.

C. home ne ſerra reſceive in nul caſe de alledge aſcun choſe, contrary de ceo que eſt fait per un come Judge. 7. H. 7. 4. Br. Offic. 10. 37. & 42.

Iſſint ſi le vic. teigne ſon Torne apres ſon mois, & fait Record deins le mois, & home eſt andite de felony a meſme Torne, ſemble le party ne pt. averr encounter cel.

Auxi ſi le vic. ou ſon Torne prender Inquiſition per 8. Jurors, & retorne que il fuit per 7. ſemble le party n'avera Traverſe a ceo.

Vide plus Kitch. Retorne brevium. 45, 46, 47.

CAP. 43:

Si retorne de vicount ſerver pur Indictment.

Reſcous de delon. NOta que coment que eſt communement dit, que encounter retorne del vicount il ny ad aſcun traverſe, averment, ou reſpons; uncore ſi le vicount retorna un Reſcous fait a luy; dun que fuit arreſt per luy (ou per ſes officers) pur felony & que eſt priſe hors de ſon poſſeſſion; icy non obſtant que ceo returne ſoit matter de record, &c. uncore neſt ſufficient de ſerver come un indictment vers ceſtuy que fiſt le reſcous (de mitter luy a reſpond. ſes ceo, ſi neſt tro. per enqueſt) come appiers. Fitz. Coron. 48. & Stamf. 31. cap. & 95. 1. H. 3.

Meſme le ley eſt, ſi le vic' retorne que le priſoner eſt eſcape, &c. Vide Fitz. Coron: 149. & Finch. f. 69. & Stamf. 31. c. *L'on monnſier Stamf. done ceo reaſon. ſc. per ceo que eſt contrary a le Stat. fait.* Anno 25. E. 3. c. 4. *que voet que nul ſoit impriſon, ne ouſte de ſon frank. ſa. preſentment, ou bre. original, &c.* 1. E. 3.

Mes Reſcous retorne per le vic. dum arreſt ſur Capias, ou per auter cauſe (& ney. per felony) eſt in lieu dum Inditement, & ſur le retorne l'auter ſerra miſe a reſpond, &c. 13. H. 7. f. 21. Br. Reſcous 8. & Fitz. Attach. 1. & Retorn. 32.

Et per ceo in tl. caſe le vic. in ſon retorne doit m're le certainty del lieu jour, & Ani. & del perſons q. ſont le Reſcous; mes comt. ſoit ſa. Addition del aſſers bon. hic cap. 36.

CAP.

CAP. 44.

Old Sheriff.

The return of the old Sheriff ſhall not conclude the new Sheriff.

Br. 5. And therefore where the Sheriff returned a Jury de viſnet' de D. afterwards the new Sheriff returned upon the Diſtringas, quod non fuit tale viſnet. de D. in dicto comitatu, and this return of the new Sheriff was holden to be good. 3 H. 6. 56.

34. H. 6. Upon a Fieri fac' the Sheriff returned quod cœpit bona ad valenc'x.l. ad quem non invenit emptores, whereupon there went out to the new Sheriff a Vendic' expon. who returned that his predeceſſor non cœpit bona; Ideo, &c. and it was holden to be good.

And yet if the old Sheriff returneth a Juror in iſſues, and the next Sheriff at the Diſtringas return the ſame Juror nihil, the laſt Sheriff ſhall be amerced; for he cannot return nihil, contrary to the former return of his predeceſſor, but he ought in ſuch caſe to purſue the laſt return; and if any Juror hath ſold his land, or that it be recovered from him, or that the Juror was ſeiſed in the right of his wife, who after died without iſſue, or if the Juror had an eſtate conditional, and the condition be performed, and thereupon the feoffor hath re-entred, or the like, in theſe caſes the Sheriff ought to return the ſpecial matter, and to conclude, Et ſic nihil habet: 19 H. 6. 38. Br. 49. Fitz. Ret. 13.

And if the Sheriff ſhall return a man ſufficient, upon the venire fac' who is not (nor ever was) ſufficient, whereby the next Sheriff is charged with the iſſues, he ſhall have an action of Diſceit upon the caſe againſt his predeceſſor, for that he cannot return nihil contrary to the former return of his predeceſſor, by the opinion of Paſton in the former book and caſe of 19 H. 6. Br. Ret. 49. & Fitz. 13.

19. H. 6. And yet by the opinions of Fort. and Markeham (in the ſame caſe) if the old Sheriff hath returned the defendant ſufficient, and the next Sheriff ſhall return him nihil, this is good, for that the plaintif may have a Capias, and an Exigent againſt him; but otherwiſe in caſe of a Juror: Br. 49. & Fitz. 13.

Note that the Sheriff cannot ſummon or diſtrain himſelf, nor his fellow Sheriff within a City. Now, what manner of returne they ſhall make thereof.

In a Precipe quod Reddat againſt Tho. Wyks one of the Sheriffs of the City of Gloc. and two others, the Sheriffs returned that they could not ſummon Tho. Wyks (one of the Sheriffs) which was ſued, and they made their returne after this manner.

Somon. infranom. Ed. Mi. & Jo. K. { John Den. / Ri. Fen.

Et quoad ſummon. infranom: Tho. Wyks Juſtic. infraſcr. certific. quod idem Thomas & ego Thomas Wyks jam unus vic. Civit. Gloc. ſumus unus & idem, & non alius neque diverſ. Ideo ego prefatus Thomas, & H. H. alter vic. civitate pred. meipſum ſecundum exigentiam iſtius brevis Summon. non poſſumus.

Reſpon. predictor. { Tho. Wyks. / H. Hyde.

Et ceo fuit adjudg. bon retorne Anno 7. Eliz. Benlows reports.

Alias. Baron infraſcr. certifico quod ego H. W. miles modo ſum vic. Com. C. Ideo meipſum diſtringere non poſſum, prout interius mihi precipitur. Br. proces 9.

Vide Plus hic c. 30. & 31.

CAP. 45.

Other Rules concerning the formes of Retornes.

NOte that in every originall Writ, where ſummons lyeth, the Sheriff muſt firſt ſummon or warne the tenant or defendant to appear and anſwer, &c. and this muſt be done in the preſence of two ſummoners, &c. (vide hic c. 31.) which being done, the Sheriff muſt retorne the Writ in this manner, ſc. if the defendant be ſufficient, firſt he muſt retorne two common Pledges for the Plaintiff, and then the names of the ſummoners, as followeth.

Reſponſio A. B. vicecom. com. infraſcript.

Plegii de proſequendo { Joh. Doo. / Ric. Roo.

Summonitores infranominati J. S. (the defendant) { Will. Brown. / Rob. Woolward.

And the like retorne may be made in all actions reall, if the tenant or defendant be ſufficient.

But if the tenant (or defendant) be inſufficient, then the retorne may be thus.

Reſponſio A. B. vic. Com. infraſcript.

Plegii de proſequendo { Joh. Doo. / Ric. Roo.

Infranominatus I. S. Nihil habet in balliva mea per quod (or unde) Summoniri poteſt. (If it be in any real action; or in any action of Annuity, Covenant, Debt, or other Writ, where ſummons lyeth:) And yet if there be no land whereupon the tenant may be ſummoned, quere if this (Nihil) be a good retorne, except that the Sheriff retorneth further, Nec eſt inventus, for that the defendant may be ſummoned by his perſon. If it be in treſpaſs, or upon a Diſtringas, upon a Scire fac. or Fieri fac. and that the defendant be inſufficient, ſee in what manner thoſe retornes ſhall be made, hic poſtea c. 67.

But if the Sheriff will not make execution of the Writ, but will delay the ſame, then they will retorne it in one of theſe two ſorts.

Reſponſio A. B. vic. Com. infraſcript.

1. Infrano-

1. Infranominatus I. S. non invenit mihi Pleg. de proſequendo.

And note that in every Writ which hath therein this clauſe. (Si fecerit te ſecurum de clamore ſuo proſequendo, &c.) there the Sheriff is to take ſureties (or Pledges) of the Plaintiff, that he ſhall proſecute his ſuit; or otherwiſe the Sheriff needs not to execute the Writ, nor to make any precept to the Bayliff to execute the ſame. Hic c. 52.

2. Iſtud breve mihi deliberat. fuit (or mihi venit) adeo tarde, quod illud exequi non potui propter brevitatem temporis.

And it ſeemeth that the Sheriff may retorne Tarde, in every Writ except in an attachment, and in a Capias. Hic. 36. & 53.

But let the Sheriff beware in making of theſe two laſt manner of retornes, that they be true; otherwiſe it is not only a breach of his Oath, but alſo he is puniſhable for ſuch his falſe retorne.

Concerning Pledges. See plus hic c. 114.

Now it followeth to ſhew and ſet down the uſual forms of returns, &c.

The form of the Precept of the Judges, directed to the Sheriff to ſummon the Aſſiſes, and Gaol delivery, ſee in the Regiſter of the judicial Writs, f. 30. & liber Intrac. 443. with the retorne thereof.

CAP. 46.

Returna Summon. Aſſiſ.

1. VIrtute iſtius præcepti mihi directi venire feci coram Juſticiariis infra ſcriptis, ad diem & locum infra contentum, omnia brevia Aſſiſarum, Juratorum & certificationum in Com. C. infraſcr. (coram quibuſcunque Juſtic' tam per diverſa brevia dominæ Elizabethæ, nuper Reginæ Angliæ, quam per diverſa brevia domini Regis nunc) una cum pannellis, attachiamentis, reattachiamentis, ſummon. reſummon. & omnibus aliis adminicul' Aſſiſarum. Juratos & certificationes illos qualitercunque tangent', Venire feci etiam coram præfat' Juſticiariis ad Gaolum dicti Domini Regis Caſtri ſui Cantabr' de priſonibus in ea exiſtentibus deliberand. aſſignand. ad præfat' diem, omnes priſon' in * goala prædicta exiſtent', una cum eorum attachiamentis, reattachiamentis, & omnibus aliis adminiculis priſon' illos qualitercunque tangent', & de viſneto cujuſlibet villæ & loci ubi felon' unde iidem priſonarii indictati appell' ſive arreſtat' exiſtunt fact. fuerunt, tam infra libertates quam extra, xxiiii. probos & legales homines, quibus rei veritas melius ſciri poterit & inquiri: Et qui priſonar' illos nulla affinitate attingunt, una cum quatuor hominibus & præpoſit' villæ & loci eorum ad faciend. ea quæ tunc ibidem eis ex parte domini Regis nunc injung'. Publicè etiam proclam' feci per totam balliwam meam, quod omnes illi qui ſequi voluerint verſus priſon' illos ſeu eorum aliquem, quod tunc ſint ibi verſus eos prout juſtum fuerit proſecutur'. Scire feci etiam omnibus Juſtic' pacis, Coronator. Seneſchall' dominorum & magnat', & ballivis libertat. & hundred. com. predicti, quod tunc ſint ibidem cum rotulis, recordis, indictamentis, & aliis memorandis ſuis, ad faciendum ea quæ ad officia ſua pertinent, prout interius mihi præcipitur.

Reſiduum executionis iſtius præcepti patet in quibuſdam ſcedulis huic præcepto annexatis.

A. B. Armig. Vic.

Fitz. 181. Cromp. 205.

2. * Or in gaola com. pred.

3.

4.

Et donque ſequitur les Pannells. de 24. de cheſcun Hundred de meſme le County, que ſerra annex al Retorne del dit Precept. Cromp. 206.

The Retorne of the Precept for the Gaol delivery.

Executio iſtius Precepti patet in diverſis pannellis eidem precepto conſut. Et ulterius proclamari feci per totam ballivam meam, quod omnes illi qui proſequi voluerint verſus aliquos vel aliquem, de ullo infracontento pro Domino Rege, aut pro ſeipſis, quod tunc ſint ibidem cum billis ſuis in forma juris proſecutor. &c. Libr. Intrac. 443. b.

Auxi un Kallender de nominibus Juſtic. pacis, Coronatorum, Seneſchall. Ballivorum libertatum & Hundradorum, & Priſoner. (quex ſont in le Gaol, ſeu que ſont bayl per les Juſtices apres que fuer. commit. &c.) ſerra auxi deliver per le vic. al Juſtices de goal delivery: Le forme de que viens, hic cap. 98.

And the Warrants which the Sheriff muſt make by vertue of this Precept (for the ſummoning of the Aſſiſes) to the Bayliffs of Liberties, and Bayliffs of Hundreds, muſt contain in them the whole ſubſtance of this Precept: but whether it be in Latin or Engliſh, it is not material, ſo that it be made in due form: and it is needful that the Sheriff keep for himſelf a particular note of the names of ſuch perſons as he nominateth in his Warrant, to be ſummoned to ſerve in or upon the grand Jury, and not to leave it to the diſcretion of Bayliffs to put in and out whom they liſt in that ſervice.

The form of the Warrant made by the Sheriff or Under-ſheriff, for the Summoning of the Aſſiſes.

A. B. miles vic. comitatus prædicti (ballivo libertatis de *C.* vel) ballivo Hundred. de A. ſalutem, Virtute cujuſdam præcepti mihi directi, tibi mando, Quod venire facias coram *Jacobo Ley* Milit. & Barronetto, & *Johanne Doddridge* Milit. &c. Juſticiariis Aſſiſ. in comitatu prædicto ad Aſſiſas apud Caſtrum Cantabridg. in comitatu prædicto decimo die Auguſt. proxim. tenend. (or thus, die Lunæ exiſtent. viceſimo die M. proxim. futuro) omnia brevia, &c. Necnon, &c. ſeperal. perſon. ſubſcript. ad faciend. ea quæ tunc & ibidem ex parte domini Regis eis injungentur; Publice etiam proclamari facias per totam ballivam tuam q. omnes illi qui ſequi voluerint verſus priſon. in goal. (domini Regis) comit. prædict. quod tunc ſint ibi verſus eos prout juſtum fuerit proſecutorum: Scire facias etiam omnibus Juſtic. pacis, Coronat. ſeneſchallis Dominorum & Magnatum Eſcheatoribus, ballivis libertatum, & omnibus capital. Conſtabular. infra hundred. tuum, quod tunc ſint ibi cum rotulis, recordis, indictamentis, & aliis memorandis ſuis, ad fac. ea quæ ad ſeperalia officia ſua pertinent. Et quod tuipſe ſis adtunc ibidem ad faciendum omnia ea quæ ad officium tuum pertinent: Et habeas ibi nomina prædictor. Juſtic. Coronat. Seneſchallium, Eſcheatorum, ballivorum libertat. Necnon capitalium Conſtabular; una cum hoc præcepto ſub periculo incumbente. Dat. ſub ſigillo officii mei tali die & Anno, &c. Anno Domini 1622.

Cantab. Set down their titles at large.

A. B. Miles Vic.

Aliter. *A. B.* miles vic. &c. Ballivo hundred. de Radfeild ſalutem. Ex parte Domini Regis tibi mando, quod per totam Ballivam tuam publice proclamari facias, deliberat. goal. Domini Regis Caſtr. Cantabr. eſſend.

eſſend. coram Jacobo Ley milit' &c. & ſociis ſuis Juſtic. Domini Regis ad Aſſiſ. &c. apud Caſtrum Cantabr. die Lune, &c. Et quod omnes illi conquer. volentes verſus aliquos priſonar. infra Gaolum præd. ad locum præd. Ac. 24. probos & legales homines Hundred. pred. de viſen. in quibus aliqui priſon.' indictat, arreſtat. vel appellat. exiſt. Una cum quatuor hominibus & prepoſitis cujuſlibet villæ, & loci in quibus priſonar. pred. capt. fuer. tunc ſint ibidem parat. ad audiend. & faciend. &c. Et habeas ibi nomina Jurator. pred. Et hoc præceptum, &c. Datum die, &c.

Tibi etiam mando quod capias *T. C.* de *I.* (or has perſonas ſubſcript') Ita quod corpus ejus (or copora eorum) habeas coram Juſtic' prædictis ad diem & locum prædict' ad reſpond. dicto domino Regi de quibuſdam tranſgr' & contempt' unde indictatus exiſtit, (or indictati exiſtunt) & hoc, &c.

Subſcriptio. Tibi etiam mando quod venire fac' has perſonas in ſchedula huic warrant' annexa, nominatas; Ita quod ſint ad diem & locum prædictum ad faciendum ea quæ eis tunc & ibidem injungentur.

p. *H. S.* ſubvic'

And file a Schedule to the backſide of this Warrant; in which Schedule may be ſet down the names of ſuch as the Bayliffs ſhall warn for the great Enqueſt by themſelves, and for the Jury of Life and Death by themſelves. Theſe two laſt ſubſcriptions, or the like, may be written under the former Warrant, and then the Warrant to be ſigned under the Sheriff or under-Sheriffs hand and Seal of Office: Or elſe at the end of the Warrant (ſc. under it) the Sheriff or Under-ſheriff may ſet down the names and dwelling places of ſuch as he will have warned to ſerve in or upon the Grand Jury in particular; and he ſhall do well to keep a note of them, that he may be able to ſhew to the Court, if need require, who he had determined to have returned for that ſervice, if they had come; and if the fault fall out to be in the Bayliff, then he ſhall be puniſhed, and the Sheriff excuſed.

Note for this great Enqueſt (or grand Jury) it is meet that three or four be returned out of every Hundred: And the names of the Hundred to be written in the Margent of the Return, againſt the names of the Hundreders. And if the Sheriff ſhall return any ſuch Jurors (either to the Aſſiſes, or to the Seſſions of the Peace) without giving them warning by his Bayliff, the Sheriff is fineable.

CAP. 47.

Lib 367. The form of the Precept of the Sheriff to ſummon the Seſſions of the Peace. See in Mr. Lambard. 367. impreſ. 1599.

And note that ſuch Precept for the ſummoning of the Seſſions of the Peace, ought to bear Teſte under the names of two Juſtices of the Peace at the leaſt: And not of the Cuſtos Rotulorum alone.

And it muſt be to ſummon the County: viz. 24. probos & legales homines of every Hundred of the ſame County: And by the ſame Precept

cept he muſt command all Conſtables, Bayliffs, Cozoners, and other the Kings Officers, to give their attendance upon the ſaid Juſtices at ſuch a day and place, at the Seſſions; and there to pzeſent ſuch things which every Officer hath done ſince the laſt Seſſions, by reaſon of their Offices.

Retorna Summon' Seſſion' pacis.

REtorn. dicti brevis aliquando utitur ſic, *ſc.* Executio iſtius brevis patet in quibuſdam pannel' huic brevi conſut', vel annexis.

A. B. Armig' Vic.

Or thus.

Virtute iſtius brevis mihi directi, venire feci coram Juſticiar' infra ſcript' apud caſtrum Cantabr' infra ſpecificat' die, Anno, & loco infra-content' omnes Conſtabularios, & Ballivos hundred. infra com. ſpecificat; Nec non de quolibet dictarum Libertatum & Hundred. viginti quatuor Jurator' ad faciend. ea, quæ eis ex parte Domini Regis adtunc & ibidem injungentur. Ac etiam Scire feci omnibus Conſtabulariis & Ballivis Hundred. com. infra ſcript', quod tunc fint ibi habentes omnia nomina Artific' laborat' & ſervient' husbandriæ, infra hundred. prædict', vad. contra formam ſtatuti inde exceſſive capiend. ac inſuper ſufficient' proclamari feci infra Ballivam meam quod omnes illi qui tam pro Dom. Rege, quam pro ſeipſis verſus hujuſmodi artifices, laborator' & ſervient' aliquas querelas juxta formam ſtatuti ordinationis prædict' conqueri vel proſequi voluerint, quod tunc ſint ibi billas ſuas proſequi, Juſticiamq; ibidem ſubitur' ſi ſibi viderint expediri, prout inferius mihi præcipitur.

A. B. At' Vic.

The Warrant muſt begin in the ſame fozm as the other foz ſummoning of the Aſſizes doth (hic antea ad not') Quod venire facias coram Juſtic. Dimini Regis ad pacem in com. prædicto apud, &c. omnes Conſtabular' &c. according to the ſubſtance of the matter contained in the Writ; and to conclude it as the other is concluded, (vide pag. præced. ad not'.)

The fozm of a Pzecept foz the ſummoning of a ſpecial Seſſions. See in Lambard, p. 599.

The Return of this laſt Pzecept, as alſo the Warrants which the Sheriff muſt make by vertue of this laſt Pzecept, muſt be like in fozm to the fozmer, Mutatis mutandis.

Aliter. *I. C.* Miles Vic. Com. ad Balliv. Hundr. de *R.* & *C.* ſalutem. Ex parte Dom. Regis tibi mando, quod non omittas propter aliqu. libertat. in Balliva mea quin eam ingred. & venire fac. coram Juſtic. Dom. Regis ad pacem, ad prox general. Seſſion. pacis die Jovis, &c. ſc. d.e, &c. per Com. pred. tenend. has perſonas ſubſcript. ad reſpond. prefato Dom. Regi de quibuſdam tranſgr. & Contempt unde impetit. indict. exiſtunt. Et hoc, &c. Datum ſub ſigillo officii mei, An. die Junii, &c.

A. B.
C. D. &c.

Tibi

Tibi etiam mando quod non omit. &c. quin eam ingred. & Capias has perſonas ſubſcript. Si, &c. Et eas ſalvo, &c. Ita quod habeam Corpora eorum coram prefat. Iuſtic. ad diem & locum ſuperſcript. ad reſpond. Dom. Regi de quibuſdam tranſgr. & contempt. unde indict. vel q. impetit. exiſtunt, &c.

D. E.
F. G. &c.

Warn alſo all Conſtables in the Hundred, as well chief Conſtables as others; And all Cozoners and Wayliffs of Liberties to be and perſonally to appear before the ſaid Juſtices of Peace at the time and place aforeſaid, to do and perform ſuch ſervices as ſhall then and there be required of them. And warn A.B. of, &c. and C. D. of, &c. to apear upon the great Enqueſt, and ſo many Freeholders to appear upon the Inqueſts of life and death, as formerly you have done.

Ch. R. Subvic.

Or thus:

Cantabr. A. B. Armig' vic' com. prædict' ballivo Hundred. de Radfeild & Chevelye ſalutem; virtute brevis Domini Regis mihi directi, tibi mando quod non omittas propter aliquam libertatem in balliva mea, quin eam ingred. & venire facias coram Juſtic' Domini Regis ad pacem in com. predict' conſervandam, necnon ad diverſ. felonias, tranſgr' & alia malefacta in dicto comitatu perpetrata, audiendum & terminandum aſſignat', apud caſtrum Cantabr' in com. prædict', die Jovis proxime poſt clauſum Paſchæ proxim' futur': omnes conſtabular', &c. ut ſupra.

The form of the Precept of the Juſtice of a Foreſt, for the Summoning of a Seſſions, See in Crompton, *Authority des Courts.* 149. 150. ab.

The Form of the Sheriffs Return to the former Precepts. See hic cap. 82.

The form of the Sheriffs Return for chooſing the Verderors of the Foreſt. See hic cap. 57.

Nota, q. le Roy ad 2. Juſtices in ſon Forreſts, l'un ultra Trent, & l'auter citra Trent: Et ceux ſont Juſtices pur les Forreſts per tout Angliter. queux appent al Roy; Mez n'ey in Wales. Et ſerront faits per Commiſſion le Roy ſouth le grand Seal. Cromp. Author. des Courts, fol. 149.

Auxi les Juſtices de Forreſt covient doner jour per le. dits Precepts (on briefs) q. Sa. 40. jours inter le Teſte del Precept, & le retorne, de icel al meins, avant q. ilz. tiendr. lo. Seſſions. Cromp. fol. 150.

Auxi per ſtat. 32. H. 8. cap. 35. Juſtice del Foreſt, Park, & Chaſes diens le Realm part tener Seſſions au. luy m.on ſont ſufficient Deputy. ibidem.

Concernment le authority del dits Juſtices de Foreſt. Vide Cromp. lib. predict.

CAP.

CAP. 48.

Retorne de Accedas ad Curiam.

NOte that if falſe Judgement be given in any other Court Baron, then in the Sheriffs County Court, then the Writ of falſe Judgement is called an *Accedas ad Curiam.* Fitz. 18. d.

But this Writ, *Quod Vicecomes accedat in Propria perſona ſua ad Curiam*, &c. *ad videndum quod plena juſtitia exhibeatur*, &c. *tots jours eſt fait per le demandt. in le petite br. de Droit* (*per ceo q. il ne part my remover le parol per nul cauſe.*) *Et giſt qt. le defendant ſe pleint q. tort luy eſt fait en le petite br. de droit, on en proces du plee, q. le vic. priſe ove luy 4. chivalers de S. Countee voys à la Court vier q. droit ſoit fait pur le demandt.* Regiſt. 9. b.

And by this Writ, the Sheriff is commanded to go in perſon to the Court, in the Writ mentioned; and that he ſhall take with him four Knights of the ſame County; and there muſt require the ſight of the Plea, and in full Court. The Sheriff muſt make a Record of the ſaid Plea or Suit, in the preſence of the ſaid Knights, and of the Suitors of the ſame Court: And he muſt annex the Record ſo made, as a Schedule, to the back of the Writ: And then he muſt return and certifie the ſame under his own Seal, and the Seals of four Suitors of that Court, at the day appointed in the Writ, into the Kings Court. Term. del Ley.

Accedas ad Cur.

Virtute iſtius brevis mihi direct' in forma infraſcript' acceſſi ad curiam infra ſcript' & in plena curia illa recordari feci loquelam infraſcriptam: Et recordum illud (prout patet in Schedula hic huic brevi annex') habeo coram Iuſtic' infraſcript' ad diem & locum infra content' ſub ſigillo meo, & ſigillis, *I. B. C. D. E. F. & G. H.* quatuor proborum & legalium hominum de balliva mea, ex illis qui record. ill' interfuer': Et partibus infraſcript' diem illum præfixi quod tunc ſint ibi in loquel' illa prout juſtum fuerit proſecutor' prout interius mihi præcipitur. Vide Wilk. Intr. 243.

A. B. Ar' Vic.

The ſtile of the Court.

Horſheath.

Ad cur' Baron. *Egidii Alington* Militis ibidem tent' vi. die Februarii Anno, &c. (*reciting le ſtile del Roy.*)

Querela.

Io. S. queritur verſus *W. W.* de placito captionis & injuſtæ detentionis averiorum ſuorum.

And note, that nothing but the Plaint ſhall be removed, though they be at iſſue. Finch. 444.

The

The Bailiffs Return of his Warrant to the Sheriff.

Wilk. VIrtute iſtius præcepti mihi direct' accept' mecum *C. D. E. F. G. H.* & *I. K.* quatuor diſcret' Milit' hundred. de *Ch.* predict' acceſſi ad cur' *Eg. Al.* Militis, & recordari feci loquelam quæ eſt in eadem curia inter *I. S.* quærent. & *W. W.* def. Et record. illud parat' habeo ſub ſigillo meo & ſigill' predict' quatuor milit' ejuſdem curiæ ex illis qui record. ill' interfuer. Et partibus prædictis eundem diem præfixi prout mihi preceptum fuit: In cujus rei teſtimonium tam ego *R. F.* ballivus hundred præd. quam prædict' *C. D. E. F. G. H.* & *I. K.* quatuor legal' milit' hundred. prædict' præſentibus ſigilla noſtra appoſuimus.

Nulla curia infraſcript. *Eg. Al.* militis (unde infra fit mentio) tenta fuit poſt receptionem hujus brevis, & ante diem Retorn' ejuſdem, per quod executio iſtius brevis ad præſens per me fieri non poteſt. *Aliter.*

But it ſæmeth that the Sheriff ought here to return further, that he hath required the Lord to hold his Court, &c. And that he will not. Vide Litt. 18. e.

Aliter in Curia Baron', vel in Hundred.

Virtute brevis Dom. Regis huic ſcedulæ annex' (aſſumpt. mecum *B. C. D. E. F. G. H. I.* quatuor legales milites de dicto com. meo) in propria perſona mea acceſſi ad talem hundred. vel ad talem cur' & in plena curia illa, ſive in pleno hundred. loquelam coram Juſtic' infraſcript' ad diem & locum interius contentum ſub ſigillo meo, & ſigilla quatuor legalium hominum ejuſdem curiæ qui recordo illi interfuerunt habeo parat' huic brevi annex' juxta tenorem ejuſdem brevis: Et partibus in eodem brevi nominatis eundem diem præfixi quod tunc ſint ibi in loquela illa prout juſtum fuerit, proceſſur' ſecundum quod iſtud breve in ſe exigit & requirit, &c.

Note that this warning of the parties to be before the Juſtices at the day preſixed, is ſufficient by the reading openly of the Writ in Court, without any other ſpecial notice given to the parties.

Virtute brevis Dom. Regis huic ſcedulæ annex' (aſſumptis mecum quatuor diſcret' & legal' milit' de com. *C.*) acceſſi ad hundred. unde in dicto brevi fit mentio, tent' apud *B.* tali die et Anno, et in plena hundred. ill. loquelam unde in dicto brevi fit mentio, recordar' volui: Et *I. S.* ballivus adtunc et ibidem in plena curia ſedens (viſ. et audit' brevi predict') libros ſuos loquelam prædict' tangent' immediate clauſit, ſurrexit, et feſtinans ab hundred. illo, una cum omnibus libris illis, et omnibus ſect. ejuſdem hundredi adtunc et ibidem exiſten' aſſumpſit ſecum, et indilatè receſſit; Et præcept' dicti Dom. Regis in dicto brevi ſpecificat' adtunc et ibidem fieri executum omnino denegavit et contradixit, et libros prædict' indilatè adtunc et ibid. à viſu meo vi et armis manu fort' abſtulit et reſcuſſit, per quod executionem iſtius brevis ad præſens facere non poſſum. *Aliter.*

And note that in this Writ de Accedas ad Curiam, though the Sheriff muſt take with him four men of the ſame County, yet they neꝛe not to be Knights; but he muſt return this Writ under his own Seal, and the Seals of four Suitors of that Court. Plus hic cap. 60.

CAP. 49.

Admeaſurement.

IN a Writ of Admeaſurement of paſture (which is vicountiel) if the Writ be removed by a Pone into the common Bank, and that the parties appear there, and agree that Admeaſurement ſhall be made, then ſhall there go a Writ to the Sheriff commanding him to make Admeaſurement; the which he muſt do by a Jury, and with them he muſt go in his own proper perſon to the common paſture to be admeaſured, as appeareth by the forme of the Writ. Fitz. 126. b. But after that he and the Jury have come and ſéen the ground, it ſeemeth he may make his enquiry elſewhere; And he muſt retorne the ſame into the ſame Court by Indenture under his own ſeal, and the ſeals of the Jurors. Vide hic c. 93. & 113.

Et nota que in Admeaſurement de paſt. (ee. ant remove in Banco per pone) le def. avera jour d'appear, & ſil n'appear, donque iſſera le grand Diſtreſs in quel tiel jour ſerra done que apres poet eſtre temis: tiel jour ſerra done que apres poet ee. tene. deux County. Et in cheſcun de les deux Counties publique proclamation ſerra fait (per le vic.) que le def. vener a m're per q. Admeaſurement ne ſerra ft. Et ſil ne veigne al diſtr. & le proclaim. retorne per le vic. donque Admeaſurement ſerra ft. per ſon default, (mes ceo ſerra ſes anter bre. agard al vic. de ſs. Admeaſurement. Vide Stat. Weſtm. 2. 7. hic c. 102. & 113. & Fitz. 125. h. *le forme de tiel brief*) N. bre. 72.

But if this Writ of Admeaſurement of paſture be ſued in the County before the Sheriff, he muſt firſt ſummon the parties, who may plead in the County; and if the defendant grants that Admeaſurement ſhall be made, or pleads or ſhews no cauſe to the contrary, then the Sheriff ſhall give judgement that Admeaſurement ſhall be made, and preſently ſhall himſelf make Admeaſurement thereof. See Fitz. Admeaſur. 2. 3. & Fitz. 125. h.

Nihil poet eſtre retorne in bre. de Admeaſurement de Paſture, ou Dower. Br. Ret. 101. See hic c. 67.

And note that the common Append. ſhall be Admeaſured after this manner, firſt they muſt ſeber the common or ground; and ſo many beaſts as the graſs or hay will kéep in winter, ſo many beaſts he may put in the common or paſture in ſummer. Lectur.

And if the Common or ground be not ſufficient ſo that all the commoners may habe ſufficient to their tenements, in ſuch caſe the tenants ſhall be admeaſured, having regard to that the common will bear, ſo that every tenant ſhall be admeaſured according to the bearing of his tenement. *Et nul a'niſt mitter pluſors beaſts en le com. que ſuffiſt a manner ſon terr. que*, &c.

Retorne de Proclam. de Summons, in bre. de Admeaſurement.

Ad comit. meum tent. apud Caſtrum Cantabr. in Com. Cantabr. infraſcript. 21. die, &c. Anno regni Regis infraſcript. 3. Et ad Comit. meum tent. apud Caſtrum Cuat. in Com. C. pred. 22. die, &c. Anno ſupradicto.

Proclamari

Proclamari feci omnia & ſingula in breve pred. ſpecificat. prout mihi interius precipitur.

The like retorne of Proclamation, &c. may be made (as it ſeemeth) in breve de Communi cuſtodia, &c. but that there muſt be three Proclam. made, at three ſeveral County Courts. See hic c. 102.

44. E. 3. 11. Br. Ret. 119. In a Writ of Admeaſurement of dower, the Sheriff returneth that the wife hath more then ſhe ought to have, by forty s. per annum, and this was holden to be no good return; for he ought to return two parts by it ſelf, and the third part by it ſelf, and their yearly values, and to leave to the Court to adjudge of the value. *Admeaſurement de dower.*

Note that where the admeaſurement of paſtures, or dower, is made before the Sheriff (in his County) there the Sheriff himſelf is Judge, c. Fitz. Adm. 3.

In a Writ of Admeaſurement of dower (which is vicountiel) if it be ſued in the County before the Sheriff, all the lands which ſhe hath in dower within the ſame County, ſhall be admeaſured by the Sheriff, (ſc. all the lands which ſhe hath by the indowment of the guardian, or by the indowment of the heir when the guardian bringeth the action) 7. R. 2. Stat. Adm. 3. and the overplus ſhall be reſtored to the heir. Fitz. 148. f. See hic c. 113. plus.

But in this Writ of Admeaſurement of dower, if the Writ be removed out of the County Court into the Common-Bank, &c. then the Sheriff cannot make admeaſurement, but firſt the Sheriff muſt go to the lands, and then the Sheriff ought to divide, and to praiſe the lands by a Jury of ſeven men, and to ſet down and to retorne in certain, how much the two parts are worth per annum, and how much the third part is worth per annum: And when that appeareth to the Juſtices, it ſhall be admeaſured according to that which the Court ſhall think good. Vide Br. Adm. 2. tiel matter & Fitz. 148. h.

So that notwithſtanding the defendants default of appearance, the Sheriff is not to make admeaſurement, but to leave that to the Court or Juſtices.

CAP. 50.

Retorn' de Sum' in Aſſiſe. *Aſſiſe.*

PLeg. de proſequend. { *Johan. Doo.* / *Ric. Roo.*

VI Plo. 415. Infranominatus, *W. L.* nihil habet in balliva mea per quod attach.' poteſt, nec eſt inventus in eadem. Fitz. Ret. 57. 7. aſſ. 12.

Nihil. Infranom. *W. C.* & *I. H.* nihil habent, nec eorum alter aliquid habet in balliva mea, per quod poſſunt, ſeu eorum alter poteſt attachiari; Nec habent ballivum, neque ballivos, nec eorum alter habet ballivum neque ballivos, nec ſunt inventi, nec eorum alter inventus eſt in eadem balliva mea. 7. aſſ. pl. 12. Lib. Intrac. 81. *Aliter.*

Note the defendant in an Aſſiſe, may be attached by Pledges, if he be found; or if the Sheriff cannot finde him, there he may attach him by his goods: And therefore it is not enough for the Sheriff to retorne, Nihil habet per quod poteſt Attachiari, but there he muſt further retorne, Nec eſt inventus. 3 E. 3. Fitz. Retorn. 57. plus hic c. 52.

And if he be attached by Pledges, then the Sheriff may returne it after this manner.

Infranominatus *W. L.* attachiatus eſt per Pleg. { *A. B.* / *C. D.* } 5. E 4. Br. Retor. 93.

Alſo the Wayliff of the defendants may be attached by Pledges, and the Sheriff may make his returne accordingly. 28. aſſ. pl. 40.

Aliter ubi eſt Attache per biens.

Aliter. Infranominat. *W. L.* attach. eſt per unam vaccam pretii. xxx. s.

Or thus. Infranominati *W. L.* & *I. P.* attachiati ſunt; viz. *W. L.* per unum bovem pretii xx. s. Et *I. P.* per unum equum pretii. 40. s.

By the Statute of Weſtm. 2. c. 25. in fine, the Sheriff ſhall not take an Ox of the diſſeiſee, but of the diſſeiſor only, and if there be many diſſeiſors named in one Writ, yet ſhall he be contented with one Ox; nor ſhall receive any Ox but of 5. s. 4. d. price, or the value. (quære inde) & vide Plo. 73. accordt. & libr. Intr. 69. c.

Note that if the party appear not, his Cow, (or Horſe, or other goods attached) are forfeit (to the King) and the Sheriff ſhall be anſwerable for the value thereof. Libr. Intrac. fol. 69. c. Vide hic Attachment.

Or they may be attached by pledges. Libr. Intr. 78. c. 79. c.

Reſiduum executionis iſtius brevis patet in quodam pannello (or in quadam ſchedula) huic brevi annex. (or conſute.)

A. B. Miles Vic.

Nomina recog. Aſſiſe, novæ diſſeiſinæ inter *M. C.* querentem & *T. C.* tenent. *A.B.C.D.E.F.*&c. (ad numerum xxiiii.)

Summon. Jurat. (ſive recog.) prædictorum —— { *I. D.* / *R. F.* } & eorum cujuſlibet per ſe. 28. aſſ. 40. Br. 68. 70.

Manucaptor. ſum. (recog.) prædict. { *I. H.* / *R. S.* } & { *W. P.* / *I. Q.* } & eorum utriuſque.

Here the Sheriff muſt warn or ſummon the recognitors, &c. Co. L. 158. b.

In Aſſiſe, le vic al primer jour ne retorne freq. Manucaptores ſummonitorum, & nom. Juratorum, &c. Mes al jour apres il retorne Manucaptores Juratorum. Vide Fitz. Ret. 28. Abr. d'aſſ. 146. & 37. H. 6.

Alſo in an Aſſiſe the Sheriff may returne Mandavi ballivo libertatis, qui nullum dedit reſponſum, &c. Libr. Intrac. f. 59. & 76.

Recog. quid. *Nota que les recognitars del aſſiſe, ſont les xii. homes que ſons impannel ſur le aſſiſe.* Vide Littleton. 234. Co. L. 158. b.

Note that the word Recognitors, is taken for the Jury impannelled upon an aſſiſe. Min. And the ſummons of the Recognitors or Jurors may be made to their perſon in any place within the County where the land in queſtion lyeth. Or if the ſame be made at their dwelling houſes, and thereof plain notice given to any of their family, it is ſufficient.

Ret. Attach. & Ret. Nihil difference. *Aſſiſe vers* A. *& le vicount retorne, que le bayly del* A. *attach. eſt, & ne dit que* A. non eſt inventus, *uncor le retorne agard bon: mes on le vicounts retorne* Vide Plo. 73. b. & 415. 26. aſſ. 33.

retorne que le defend. nihil habet,&c. *il dira plus*, quod non habet ballivos, nec ballivum, nec eſt inventus in eadem, &c. 26. aſſ. p. 33. Br. Retorn brevium 68. Fitz. Retorn. 39.

Aſſiſe,le vicount retorne le bailiff del defendant attache per pledges,& ne retorne que le defendant non eſt inventus,*& pur ceo que le vic' per ſon retorne ſuppoſe que le bailiff uſt eſtre attache, ideo le returne agard bon,car in ceo eſt include que le party n'eſt trove : & ideo videt' hic que attachment ſerra per pledges*, vide 28. Aſſ. p. 40. Br. Retorn 70. *vide plus apres tit. attachement.*

Aſſiſe vers E. Venor, *le breve fuit retorne ſic, pledges* E. V. *infranominat.* A. B. *&* C. D. *ou le retorna ſerra* E. V. *infranominat. attach. eſt per pleg.* A.B. *&* C.D. (& non ut ſupra) 3. *ou* 4. *preſidents fuer' monſtres que le primer retorne fuit bien ; mes* 40. *preſidents fuer' mr'e al contrarie, & per lautor voy, & ideo optima opinio fuit, que le retorne neſt bon, pur ceo que ceſt parol attach. fault ; car la eſt nul parol in le retorne que prove le brieff ſervie per aſcun attachement fait del defendant*, 5.E. 4. Br. Ret. 93.

Pleg' de proſequend. *I. D. & R. R.* *Aliter.*

Infraſcript' *I. S. & R. B.* attach. ſunt, & quilibet eorum Attach. eſt per Pleg. *I. D. R. R.*

Reſiduum executionis iſtius brevis patet in pannello huic brevi conſut'.

Nomina Recog. in aſſiſe Nov. diſſ. inter *M, C.* quer. (ſeu petent') & *T. C.* tenent' ſen defend.) in placito, &c.

A. B. C. D. E. F. &c. ad numerum xxiii. *Pannel.*

Nomina Recog. *I. P. & T. W.*

Summon. (Juratorum prædict. & eorum cujuſlibet) *I. D.* & *T. B.* (vel pluſors.)

Manucaptor. ſum. prædict. & eorum cujuſlibet, *I. S.* & *I. D.*

Executio iſtius brevis patet in quodam pannello huic brevi annex. *Aliter.*

Nomina recognitor. in Aſſiſ. nov. diſſ. inter *A. B.* quer. & *I. M.* def. *I. D. I. S. E. F.* &c. ad numerum xxiiii.

Quilibet recognitor. prædict. per ſe ſeparatim attachiat. eſt per pleg. *I. D.* & *R. R.*

Exitus eorum cujuſlibet. v. s.

Nomina recog. de novo appoſit. juxta formam Statuti. *A. S. B. C. D. E.* &c.

Quilibet recog. prædict. de nova appoſita attachiat. eſt ſeparatim per pleg. *I. D. R. R.*

Vide plus libro Jurat. f. 81. b.

Retorne in bre. de Annuity.

En annuity le vic. retorne le def. Nihil habet in balliva mea per quod poteſt attachiari, ou il ſerroit per quod poteſt ſummoniri, &c. Fitz. Amend. 40.

And yet the Sheriff may retorne, quod Attachiatus fuit, per A. B. & E. Intrac. 42. a.

The Sheriff alſo may make theſe retornes, Mandavi ballivo qui nullum dedit reſponſum. Intr. 35. b.

Quod ipſe virtute brevis pred. cepit de terr. & catal. pd. A. in balliva ſua ad val. 5. l. &c. Intr. 57. b. plus Intr. 35. b. 39. b. 41. a.

En ceo bre. le vic. pt. ſummon le def. per ſon parſon, fil n' ad terr. ubi pt. eſtre ſummoniri. 3. ibid. & Br. Summons 1.

The Sheriff is here to take Pledges of the plaintif de proſequendo. And to ſummon the defendants to appear at the day before the Juſtices, &c.

CAP.

CAP. 51.

Attaint. Retorn' de ſummons in attaint.

Pleg' de proſ. { *Johan' Den.* / *Richard' Fen.*

Sum. infranominat. { *Johan. S.* / *Richard. G.* } I. N. (the def.)

Reſid. executionis iſtius brevis patet in quodam panello (or in quibuſdam ſchedul.) huic brevi annex'. (or conſut.)

A. B. Ar. Vic.

Le pannel. Nomina Vigint' & quatuor milit.

Richardus M. de *N.* Ar'. *T. B.* de *A.* Ar. &c. — Ad Numerum xxiiii. And theſe 24. muſt be Knights, Eſquires or Gentlemen, having each of them 20. markes per annum, at the leaſt, of freehold. And one of them (at the leaſt) muſt be a Knight. Co. L. 156. Fitz. Attaint. 69.

Quilibet Jur. pred. per ſe ſeparatim attachiat', eſt per pleg. *C.* & *D.* Libr. Intrac. fol. 86. c.

Sum. Jur. prædict. *H. H. S. S.*

Le petit Jury. Nomina Jur. primæ Inquiſitionis in brevi huic panello annex. ſpec.'

E. M. Gen. *H. E. Gen.* &c. — For in an attaint, the Sheriff muſt returne the names of all and every of the twelve that were of the firſt Jury: and muſt diſtrain or ſummon them to appear, &c. and the proces againſt them is, Venire facias, & Diſtringas.

Pleg. prædict. Jur. primæ Inquiſitionis. — { *Thomas Pitt.* / *Gulielm. Fitt.*

Pleg. de proſ. { *Jo. D.* / *Ri. R.*

Aliter. Sum. infranominat. { *I. D.* / *Ric F.* } *I. N.*

Manucapt. ſum. prædict. & utriuſque eorum: *N. P. I. L. I. D. Ri. R.*

Reſid. execution. iſtius brevis patet in quodam pannello huic brevi annex.

Nomina xxiiij. milit. inter *R. S.* quer. & *Ri. F.* defend. *A. B. C. D. E. F.* ad numerum xxiiij.

Sum'

Sum. Jur. prædict. & eorum cujuſlibet, *I.D.R.F.*

Manucapt' ſum. prædict' & eorum utriuſque, *I.P.R.C.F.D.E.G.*

Nomina Jur' primæ Inquiſitionis unde in brevi huic ſcedulæ annexo fit mentio, *I.B.D.C.* ad numerum xij.

Sum. Juratorum primæ inquiſitionis & eorum cujuſlibet. *I.D.R.R.*

In an attaint the Sheriff may make theſe Returnes.

Quod ad diſtr. in militem, & alios, &c. breve tarde deliberat. fuit. Intr. 85. b.

Si defr. del petit Jury, Quod quilibet eorum per ſe ſeparatim per ſe attach. ſit per Pleg. 86. vel qd. diſtr. ſunt, viz. quilibet eorum per catalla ad valeur, &c. 86. b.

Quod breve pred. in omnibus ſervit. & execut. fit Intr. 90.

Nihil, vers aſcun des Furors, & q.l'autres ſont diſtr. Intr. 92.

Mandavi ballivo libertat. &c. 93. f. Returns tales 5. Et qd. non ſint plures 94.

Manucapt' ſummonit' prædictorum, & utriuſque eorum *I.L.H.P. R.S.T.V.*

Mainpernors need not to have any Addition, but their names of Baptiſm and ſirname ſufficeth.

Et unc. exigent gift vers Manucaptors ou Mainpernors, & ils ſerra utlage per le Non apparans del party per que ils impriſt. 10. E. 4. Br. Exigit 49. Ideo quære.

18. H. 8. 5. Br. 1. **In an attaint the Sheriff upon the Diſtreſs cannot return that the Defendant is dead, for there are no words in the Writ to command the Sheriff to warn the Defendant.**

46. E. 3. 18. Br. 22. **In an attaint the Sheriff returned that he had ſummoned the Jury as in an Aſſiſe; and for that no Painpriſe of the Summoners and Pledges was indorſed, &c. therefore a Summons, ſicut alias, was awarded.** Fitz. Retor. 72. **Yet ſée lib. Intr. fol. 86. No Manucaptors were returned.**

48. E. 3. 15. Br. 115. **In an attaint, the Writ is,** diligentur inquir' qui fuer' Juratores primæ Inquiſitionis; and therefore if the Sheriff ſhall happen to return eleven of the firſt Jury, and another which was none of them, yet he ſhall not be amerced; for he may miſtake ſome in his inquiry of them: but in ſuch caſe at the ſurmiſe of the Party, Proceſs ſhall go out againſt the twelfth; quod nota.

In attaint the Sheriff may
- **Summon the Defendant** in terra petita. Br. Summons, 2. 18. 20.
- **Return the Def.** Nihil. Br. Summons. 2. 18. 20. & Attaint 34.

In an Attaint the Sheriff returned a certain number of Jurors, but not to the full number; and averred in his return, that there were no moe within his Bailiwick which might ſpend 20. l. per annum: See Keilw. 97.

The Grand Jury are to be warned the firſt day. Finch. 485.

And the petty Jury muſt be all preſent when the Grand Jury is taken. Ibidem.

And in an Attaint the Sheriff muſt ſummon the Tenant to be at the Recognition or Trial. Fitz. 108. i.

CAP.

CAP. 52.

Attachment.

Attachment. Pleg' infranom. *I.D.* { *P. R.* / *I. W.* } This ſeems to be no good Return; for that the word Attach. is wanting. 5. E. 4. Br. Retor. 93.

But the return ought to be after this manner.

Infranominatus *I.D.* Attachiatus eſt per Pleg. { *P. R.* & *I. W.* }

Or upon the Attachment, the Sheriff may Return the Defend. attached by his goods, as followeth.

I.D. infranominatus Attach. eſt per unam Patellam precii x.d. vel per unam vaccam precii xxx.s.

Alſo if the Sheriff ſhall make Garniſhment, or but give warning to the Defendant, or Tenant, to appear and anſwer, &c. it ſeemeth to be good. Br. Attach. 9.

But in all caſes where the Sheriff ſhall return Nihil habet in balliva mea per quod poteſt Attachiari, ou Summoniri, it ſeemeth there alſo the Sheriff ought to return further, Nec eſt inventus in eadem: Or thus, Ideo Manucaptus eſt, or Attachiatus eſt per Plegios, &c. Fitz. Retor. 57.

Infranom. *I.D.* nihil habet in balliva mea per quod Attachiari poteſt: Nihil. Nec eſt inventus in eadem.

Aliter. Infranominati, *A.B.* & *I.D.* attachiati ſunt, & uterque eorum per ſe attachiatus eſt, vid. dict. *A. B.* per unum equum precii x.s. & predict. *I.D.* per unum bovem, pretii. xx.s.

And whereſoever the Writ is Pone per vadios & ſalvos Plegios, the Sheriff may Attach the Defendant by Pledges (or Sureties) or may Attach him by his goods. Fitz. Retor. 57.

But where the Proceſs is to Attach a Clerk, there the Sheriff muſt Summon him by his perſon, or elſe by his Land (if he hath any Lay Fee) but he may not Attach him by his goods. 32. H. 6. Fitz. Retor. 23. & Finch 135.

Note where the Sheriff attacheth one by goods, he ought to return the certainty of the goods, and alſo the value of the goods (and it is not ſufficient for the Sheriff to returne that the party is attached by goods to ſuch a value, but muſt ſhew what the goods be in Specie) the reaſon is for that if the defendant appeareth not, then the goods attached be forfeit to the King, and except the Sheriff in his returne expreſſeth the goods attached certainly and in Specie, they of the Exchequer cannot make out their eſtreats for the ſame. Vide Dyer. 199. Pl. 54.

Alſo where the attachment is made of a living thing (or things) it muſt be pretii, and ſo of a dead thing in the ſingular number; but if it be of dead things in the plural number, then it muſt be ad valentiam, and not pretii.

Attach-

Attachment ſur Appel.

Non eſt inventus, is a good retorne in an attachment ſur appel de mort, ou de Robbery.

I. F. quæ fuit uxor *D. F.* infranom. non invenit mihi pleg' de proſeq. Ideo ad executionem iſtius brevis nihil per me actum eſt. *Plegii de proſequend.*

Retorne ſur attachment, Mannucaptus eſt. per, &c. Intr. 84.

Now the forme of every original Writ is in this manner, Si *A.* fecerit te ſecurum de clamore ſuo proſequendo, &c. whereby the Sheriff is commanded, that if the Plaintiff finds him Pledges, (ſc. any men to be his ſureties) that he will proſecute the ſuit, then to execute the proces (as in the Writ is mentioned) againſt the Defendant to be before the Judges at a certain day, to anſwer thereto, &c. Finch. 53.

And therefore the Sheriff muſt take ſuch Pledges of the Plaintiff, and muſt retorne them; and if the Plaintiff will not find Pledges, the Sheriff may retorne, quod nihil fecit, quia petens non invenit ſibi plegios, &c. 1. E. 3. Fitz. Pledges 14.

Alſo in every Writ, which hath therein this clauſe expreſſed (ſc. ſi A. fecerit te ſecurum de clamore ſuo proſeq.) the Sheriff may delay the Plaintiff by making this return following; Infranomitatus *A. B.* non invenit mihi pleg' de proſequendo iſtud breve. Ideo ad executionem ejuſdem nihil per me actum eſt: or he may execute the Writ, without any Pledges, &c.

Note alſo that the Sheriff is not to return the names of any as Pledges (either for the Plaintiff, or Defendant) except they conſent and agree thereto: Stat. 27. E. 1. c. 2. and if he do, ſhall be grievouſly puniſhed: and yet for the Plaintiff the Sheriff returneth two common Pledges; or at leaſt the entry is ſo. Finch. 53.

Co. 8. 61. Fitz. 195. h. Alſo note that the King, nor Queen (in regard of their dignity and prerogative;) neither infants ſhall find any Pledges, de proſequendo, &c. Fitz. 31. f. Br. Pledges 29.

Alſo in a Quid juris clamat, Scire fac. or per que ſervitia, the Plaintiff ſhall find no Pledges, Co. 8. 61. Fitz. Pledges 1.

Note that the Sheriff muſt take Pledges of the Plaintiff for the purſuing of his ſuite; otherwiſe the Plaintiff in many caſes may be nonſuit without danger: and the Sheriff for not taking Pledges ſhall be amerced. Fitz. Pledges 1. et 7. But though there be no Pledges returned, yet the Writ being ſerved, it is well enough: Fitz. Pledges 10. For the returning of Pledges ſeemeth to be but matter of form; and the Plaintiff may finde Pledges at any time, hanging the Writ. 18. E. 4. Br. Pledges 21.

Theſe Pledges de proſequendo may be found in the Chancery, and how, and by whom, vide the Regiſter, fol. 228. et Finch. 53.

Les Pledges de proſequendo, ſi ne ſont troves al vic°, ou in le Chancery dont, pot. eſtre tro. in le Court, ou le bre. eſt retorne. Finch. fol. 53. *Ou pot. etc. trove al Aſſiſes al vic.* Fitz. Pledges 7.

Et comt. q. ceo ſoit freq; matter de forme, vnc' ſi le plt. ne trove Pledges al prime, , ne al darein, quere ſi ceo ne error.

Et per aſcuns le def. ne pt. appear, nec neſt compell d'appear, dent q. le plt. ad trove Pledges 22. H. 6. Br. Pledges 32.

Note that where a Writ cometh to the Sheriff, which ought to be ſerved by the Bayliff of a franchiſe or liberty, the Sheriff ought firſt to take Pledges (of the Plaintiff) de proſequendo, before he writes (or makes his precept) to the Bayliff to ſerve the Writ; and then

(after Pledges ſo taken by the Sheriff, and his Præcept directed to the Bayliff) all the further execution of the Writ doth appertain unto the Bayliff: And the Sheriff may retorne the Pledges, and the Bayliff may retorne all the reſt. 22. aſſ. pl. 3. Br. Pledges 15. & 21. H. 7. fol. 14. Quere concerning the retorne by præcepts.

But if the Bayliff of the liberty ſhall take the Pledges de proſequendo, the Sheriff ſhall be therefore amerced, &c. And therefore the Sheriff néeds not make any Præcept to the Bayliff of the liberty, to execute the Writ, untill the Plaintiff hath firſt found ſureties before the Sheriff himſelf. 14. H. 6. Fitz. Amerc. 2. Br. Ret. 61.

And yet by ſome opinions, the Bayliff may take Pledges de proſequendo, well enough. 22. aſſ. pl. 3.

CAP. 53.

Retorne de Capias, Alias, & Pluries.

Capias in debito.

INfranominatus *A. B.* non eſt inventus in balliva mea.

Infranominati *A. B.* & *C. D.* nec eorum alter, inventus eſt in balliva mea. Alit.

And if the Sheriff ſhall retorne it thus. Infranom. *A. B.* et *C. D.* non ſunt inventi in balliva mea, it is good enough, without ſaying, Nec eorum alter, or quod nullus eorum eſt inventus; for that ſhall be implyed.

If there be three or moe, then thus: Infranominatus *A. B.* et cæteri defend' infranominati non ſunt inventi in balliva mea. Alit.

Theſe Writs may be returned in divers manners, as followeth; Firſt if the Sheriff will * not, or cannot ſerve or execute the Writ, then thus, A. B. infraſcr' non eſt inventus in balliva mea poſt receptionem iſtius brevis, vel, poſt advent' hujus brevis.

* Quære how it can ſtand with their oath not to ſerve it, or not to endeavor it, to their beſt power, &c.

Nihil retorne ſes le Capias: Vide 8. R. 2. Fitz. Proces 224. & libro Intrac. fol. 109. d.

But the Sheriff may not retorne, quod defendens non eſt inventus in balliva, or non fuit infra ballivam ſuam, poſt, &c. prout ei aliqua via (vel modo) conſtare poterit: But he muſt retorne Non eſt inventus generally and directly. 9. H. 6. Fitz. Ret. 9.

And if the party be taken, then thus.

Virtute iſtius brevis cæpi *I. W.* infraſcriptum, cujus corpus coram Juſtic' infraſcript' ad diem & locum interius content. habeo parat. prout breve iſtud exigit & requir. &c. vide lib. Intr. 109. c.

Infraſcript. *I. W.* captus eſt per corpus ſuum, cujus corpus ad diem, &c. habeo paratum prout interius mihi præcipit' vel ſic ſecund' exigent' hujus brevis. Aliter.

Virtute iſtius brevis mihi directi cæpi corpus infranominati *I. S.* cujus quidem corpus coram Juſticiar. infraſcript. ad diem & locum infracontent. parat' habeo, prout interius mihi præcept. fuit; vel prout iſtud breve in ſe exigit & requirit. Aliter.

Infraſcript. *Jo. S.* captus eſt per corpus ſuum, cujus corpus ad diem & locum infracontent. paratum habeo prout, &c. Aliter.

R. S. Infranominatus non eſt inventus in balliva mea, & quoad capiend' Aliter ball' libert.

I. F.

I. F. infranominat' mandavi *R. S.* ballivo libertat' de *S.* qui plenum return. habet omnium brevium & execut' eorund' cui executio iſtius brevis totaliter pertinet faciend', extra quam libertat' nulla executio iſtius brevis inde per me fieri poteſt; qui quidem ballivus mihi ſic reſpondit, quod cæpit corpus pd' *I. F.* cujus corpus p'dict. *R. S.* coram Juſticiar. domini regis infraſcript. ad diem & locum infracontent. paratum habebit; vel ſic, qui quidem ballivus null' mihi dedit reſponſum. Vide liber Intr. 109. c. d.

But note that whereſoever the Sheriff retorneth Cepi Corpus, if the Sheriff ſhall not have the priſoner ſo as he appeareth at the day, the Sheriff ſhall be amerced, 11. R. 2. Fitz. Reſpond. 14. & hic c. 37.

Where there be two or more of one name, how the Sheriff may ſafely make retorne. See hic c. 61.

I. D. infranominat. fugit ad libertat' *I. E.* Armig. & continuè ibidem morat. ideo ut ipſum capere non poſſum; this is a good retorne; and yet if the King be a party, the Sheriff is to enter the liberty, and to execute the proces, &c.

Ante adventum iſtius brevis mihi directi, *I. S.* infranominat' intravit Sanctuarium ſancti *Petri* Weſtm. in com. Midd. & in eadem adhuc moratur; per quod corpus prædict' *I. S.* coram Juſtic' infraſcript' ad diem & locum interius ſpecificat' habere non poſſum, prout, &c. But note now by the Stat. 1. Jacobi c. 25. that ſo much of all Statutes as concern Sanctuaries made before Anno 35. Eliz. be repealed. *Sanctuarium.*

Virtute, &c. cæpi corpus *A. B.* infranominati, & ipſum ad gaolam Domini Regis caſtri ſui de *C.* commiſi, ibidem ſalvo cuſtodiendum, &c. Quem poſtea prætextu cujuſdam alterius brevis dicti Domini Regis mihi direct', & huic brevi annex' à priſona illa deliberari feci. *Aliter.*

Virtute, &c. cæpi corpus. *A. B.* infranom', &c. Et ipſum ad gaolam, &c. *Aliter.*

Poſteaq; viz. tali die & anno, prætextu cujuſdam alterius brevis dicti domini Regis mihi directi, cujus tranſcript' vobis mitto huic brevi annex' prædictum *A. B.* à priſona illa deliberari feci; Et ideo curpus prædict' *A. B.* coram Juſtic' infraſcript' ad diem & locum infra content' habere non poſſum, prout interius mihi præcipitur.

Virtute, &c. cæpi corpus *I. C.* infranominat' cujus corpus coram Domino Rege ubicunque tunc fuerit in Anglia, ad diem & locum infracontent' parat' habeo, prout interius mihi præcipitur.

Et ſi le defendant que eſt iſſint priſe, ſoit malad' en priſon: ou ſi le vicount ne voit faire aſcuns expenſ. Ou coſtag' pur luy ameſner al Weſtm. *devant les Juſtic' ſelonque le purport del brief*, tunc ſic;

Virtute iſtius brevis *A. B.* infraſcript' captus eſt per corpus ſuum, & in tali priſona ſive gaola adeo languidus detentus, quod corpus ejus ad diem & locum interius content' habere non poſſum abſque mortis periculo. *Languidus.*

Virtute iſtius brevis mihi directi cæpis corpus infranominati *I. S.* qui quidem *I.* eſt in priſona Domini Regis de *C.* adeo languidus, quod ob metum mortis ipſum coram Juſtic' infraſcriptis ad diem & locum infra content' habere non poſſum, prout interius mihi præcipitur. *Aliter.*

Qui quidem *I.* tantis vexat' infirmitatibus, quod ipſum ſine magno mortis periculo propter corporis ſui debilitatem coram Juſtic' infra ſcriptis, ad diem & locum infra content' habere non poſſum, prout interius, &c. *Aliter.*

E. D. infranominat' captus fuit per *I. C.* conſtabularium villæ de *D.* apud *T.* in com. *D.* pro ſuſpectione felon', & ea de cauſa in gaola prædict' *Aliter pro felonia.*

dict' ſub cuſtodia mei detentus fuit, & in eadem gaola adeo languidus eſt, quod nullo modo laborare ſive carriari poteſt: Vel ſic, cujus corpus paratum habeo coram vobis ad diem, &c. infra content', ad faciend' quod iſtud breve in ſe exigit & requirit.

Aliter. Quod ante adventum brevis iſtius pred. *R. D.* captus fuit, &c. Et in priſona, &c. detent', virtute cujuſdam querelæ verſus ipſum per nomen *R.D.* &c. in placito Debiti ſuper demand. xx. l. in curia, &c. ad ſectam *J. G.* levat. &c. Liber Intrac.

Que il eſt in priſon per Capias ad ſatisfac. in det.

Que il eſt in priſon per Condempnation. in placito debiti, &c.

Quod ante adventum iſtius brevis, le def. fuit commiſſus per duos de conſilio Regis, &c. Corpus tamen ejus coram Juſtic. infraſcript. ad diem parat. habeo. Fitz. Attur. 14. *Mes nota q. in ee. caſe le vic. doit faire le def. a'ee. arreſt ſur le Capias, comt. avoit le corps dent.* ibid.

Vide plus per tiel retorne. Libro Intrac. f. 109. c. d.

Superſed. ſur Capias. Virtute iſtius brevis vobis certifico quod poſtquam iſtud bre. mihi liberat' fuit ad capiend. *R. T.* & alios defendentes in iſto brevi ſpecificat', idem *R.* & alii infranominati protulerunt mihi breve Domini regis de ſuperſed. quod huic brevi eſt conſut. virtute cujus ſuperſed. omnino.

Infranominatus *R. T.* deliberavit mihi breve Domini Regis de ſupreſed. quod quidem breve huic brevi eſt annex. Ideo ulterius ad executionem iſtius brevis, Nihil per me actum eſt.

Theſe two laſt ſæm to be good retornes, if the ſuperſedeas be delivered to the Sheriff (or officer) before the party be arreſted, &c. But if he be arreſted or taken upon the Capias, and after he delivers a ſuperſed. of an older date to the Sheriff, now the Sheriff may not deliver him; for it was his fault not to deliver the ſuperſed. before he was arreſted. 19. H. 6. 43. And now upon the retorne of the Sheriff he ſhall be delivered by the Court. Cromp. 145. vide Fitz. Ret. 16.

Superſed. poſt capi corpus. Virtute iſtius brevis mihi directi Cæpi corpus infranominati *B.C.* qui poſtea protulit mihi breve domini regis de ſuperſed. mihi directi, & huic brevi conſut'; Ideo corpus ſuum coram Juſtic' infraſcript. ad diem & locum infracontent' habere non poſſum prout interius mihi præcipitur.

And yet this laſt ſæms to be no good retorn, for that the party is ſtill adjudged a priſoner, for that he was once taken, and therefore the Sheriff was to be amerced for ſuch a retorne. Vide Fitz. Ret. 16.

But theſe Writs (of Capias, &c.) are ſeldom or never uſed to be returned by Sheriffs; for Atturnies do uſe to return them themſelves; but that muſt be done with the leave and ſufferance or conſent of the Sheriffs, otherwiſe the Atturnies cannot juſtifie the ſetting of the Sheriffs name to their Writs.

Tarde. Upon a Capias *de Appel de mort*, the Sheriff returneth quod breve adeo tarde ſibi venit quod illud exequi non potuit propter brevitatem temporis, and it was holden to be a good return. 8. H. 4. 21. Br. 34.

But upon a Capias (ad reſpond, &c.) Tarde is no good retorne, for the manifold miſchiefs which may follow thereon; and therefore in ſuch caſes the Sheriff ſhall be amerced if the retornes tarde. 2. H. 4. & 21. H. 6. Fitz. Ret. 37. 42.

Mortuus. Upon a Capias the Sheriff returneth that the party is dead; quære if this be a good return. Br. 125.

But in a Præcipe quod reddat, as alſo in a Scire facias, and upon a Corpus cum cauſa, it is a good retorne that the tenant or party is dead. Br. Ret. 125.

If the Sheriff retornes that the party is dead in priſon, he muſt further

ther

ther ſhew that the Cozoner had the view of the body, &c. 3. H. 5. Fitz. Ret. 107.

7. H. 4. 11. Br. 107. Upon a Capias the Sheriff returneth quod cæpi corpus, and yet hath not the body in Court at the day of the return, he ſhall be amerced: and if it were upon a Capias ad ſatisfaciendum, the Plaintiff may have his action againſt the Sheriff foz the debt, as upon an eſcape; foz by ſuch return the Sheriff hath concluded himſelf.

Br. 100. 102. 20. E. 4. 3. H. 6. 3. 18. H. 8. 1. Upon the Capias the Sheriff returneth cæpi corpus, & quod eſt languidus in priſona; this is a good return, if it be true that the party is ſick indeed; and yet upon ſuch a return quod languidus eſt in priſona, a Duces tecum may be awarded to the Sheriff to bring in the priſoner, oz elſe the def. if he will appear, ſhall be received ſo to do. Vide libr. Intrac. fol. 400. d. *Languidus.*

11. H. 6. Br. 123. The Sheriff upon a Capias returned mandavi ballivo, & quod ipſe cæpit corpus, ſed illud hic habere non poteſt quia languidus eſt, &c. And the Court being informed that he was not ſick, a Writ was directed to the bayliff to return the body, and to appear; and upon examination it was found that the party was not ſick, whereupon the bailiff was fined, and committed to the Fleet.

And our books ſeem to vary in this point, ſome allowing the Sheriffs retozne, quod cepi corpus, ſed non poſſum habere per malady. Vide 22. E. 3. Fitz. Ret. 94. But 31. E. 3. Fitz. Ret. 85. the Sheriff foz the like retozne, was amerced.

Upon a Capias the Sheriff retozned that the defendant was ſo ſick, that he could not take oz carry him out of his houſe foz danger of death, and it was adjudged a good retozne. Fitz. Ret. 105. et 122.

The Sheriff being commanded to have the body at a day, retozned quod languidus eſt, and the retozne was holden to be nought, and the Sheriff was amerced. 41. E. 3. Fitz. Ret. 71.

And yet the Sheriff may kæp the body after the day of the retozne, foz he is chargeable to bring him in by his own retozne.

CAP. 54.

Retorn. de Capias ad ſatisfac.

Capias ad ſatisfac. Virtute iſtius brevis mihi directi cæpi corpus infranominat' *A. B.* cujus quidem corpus, coram Juſtic. infraſcript. (vel coram domino rege) ad diem & locum infracontent' parat. habeo ad ſatisfaciend. infranominat. *C. D.* de debito & damnis infraſpecificat. prout interius mihi præcipitur.

Aliter. Virtute iſtius brevis mihi directi cæpi corpus infranominati *A. B.* cujus corpus ad diem & locum infracontenta paratum habeo. Plo. 441.

A. B. Armig. Vic.

Upon the Capias ad ſatisfac. if the execution be duly done by the Sheriff, and that the Plaintiff hath his demand, though the Sheriff retozneth not this Writ, it is no danger to him. Sæ hic c. 38.

Upon a Capias ad ſatisfac. non eſt inventus, is a good retozne, Libr. Intr. fol. 109. d.

And

And ſo is Nihil. Ibid.

But let the Sheriff take hæd, if herein he return cæpi corpus, that he hath the body in Court at the day; otherwiſe he is chargeable for the whole debt, by reaſon it is an eſcape, &c. See Br. Ret. 107.

If a Writ of execution ſhall come to the Sheriff againſt a priſoner (in the gaol) who is attainted of felony, here the Sheriff may returne that the priſoner is attainted, and that therefore he cannot take him in execution: but if the Sheriff ſhall ſerve the execution upon ſuch a priſoner, and after the priſoner getteth his pardon for the felony, yet if the Sheriff ſhall ſuffer his priſoner to go at large, the Plaintiff at whoſe ſuit the execution was, may bring his action of debt upon the eſcape againſt the Sheriff, and ſhall recover; for although by the attainder the execution were ſuſpended, yet by the pardon it was revived: it was the caſe of one Croft a priſoner in Newgate. Anno.

Laſſels ſuit priſe in execution per Capias ad ſatisfac. hors del bank le Roy, & de leſchequer iſſiſt bre. de Prarog. de Habeas Corpus teſte jour dent l'arreſt, & retorn dent le Capias, per q. le vic ameſne le corps in l'eſchequer, & la m're le cauſe del detainer, d'eſtre d'aver le corps al jour del retorne, &c. Et illonque le priſoner fuit commit al fleet in execution per le dit des, & anxi per det le royne q. il la confeſs in Court; Puis habeas Corpus vient del bank le Roy al jour, &c. Gardian ameſne le corps, & m're tot. le matter en ſon retorne, ideo le priſoner fuit remaunde, &c. Dyer 197.

Sur Attachment de Priviledg' in treſpaſs per Rythe (un attorney del Bank) verſes Kemp, retornable al certen jour, & le def. fuit apres condempne in autr. Br. de Ter. de Priviledge, & Capias ad Satisfac. iſſiſt retor. apres le dit premer jour: Et al jour del premer retorne, le vic. port le party, & retorne amb. les Br. Mez dit q. ſon entent ne fuit de retorne le execution. dent le jour (ſpecialment feſant mention. del primer matter de retorne,) Et hoc fuit fait bone, & politice, per luy ſan. indempnes d'eſcape, &c. Et al preyer del Plaintiff le vic. fuit diſcharge, & le Def. commit in Execution al Fleet. Dyer. 192.

Capias utlagat', Plus hic exigent.

Virtute, &c. cæpi corpus *A.B.* infranominat' cujus corpus coram Juſtic' infraſcript' ad diem & locum infracontent' parat' habeo prout interius mihi præcipitur; reſiduum vero exec' iſtius brevis patet in quadam inquiſitione huic brevi annex'.

Sur Capias utlagatum, Non eſt inventus, is a good Return, thus; Infranom': *I. S.* Non eſt inventus in balliva mea:

Reſiduum execut. iſtius brevis patet in quadam Inquiſit. huic brevi annex.

Inquiſitio Indentat. capt. apud, &c. Qui dicunt ſuper Sacram. ſuum quod *I. S.* in dicto breve nominat. nulla bona neq; Catalla, terr. ſive Tenementa habuit aut tenuit in Comit. pred. die Jovis prox. poſt feſtum ſancti B. mart. An. regni Dom. Regis nunc 3. in dicto Br. ſpecificat. Nec unquam poſtea; quæ in manus dicti Dom. Regis capi ac ſeiſiri poſſunt, ad noticiam Jurator. predictor. In cujus rei teſtimonium, tam ſigillum vicecom. pred. quam ſigilla Jurator. pred. huic inquiſitione Indent. ſunt appenſa. Datum die, An. et loco, ſupradict.

This enquiry muſt be, what Lands, Goods, or Chattels the party Outlawed had, the day of the Outlary, or at any time after.

And upon the Capias Utlagatum, if the party be found, the Sheriff ſhall take and put him in priſon, without Bail or Mainprize, for that he had the Law in contempt. hic cap. 96.

Alſo

Alſo upon the Capias Utlagatum, the Sheriff may ſeize and keep his goods, &c. hic cap. 15. See plus hic cap. 15.

Alſo upon the Capias Utlag. againſt an Infant of the Age of fourteen years, the Sheriff may impriſon him, and may ſeize his goods as forfeit, as it ſeemeth, Country Juſt. cap. 77. & Co. l. 128.

Bracton lib. 3. fol. 125. b. num. 5. ſaith, Minor qui infra ætatem vii. annorum fuerit, utlagari non poteſt, nec extra legem poni: quia ante talem ætatem non eſt ſub lege aliqua, nec in Decima; Non magis quam femina, quæ utlagari non poteſt, quia ipſa non eſt ſub lege (ſc. in Franco plegio ſive Decima, ſicut maſculus duodecim Annorum & ulterius, &c. Minſh. Sed forma ſic fieri poteſt.

Upon a Capias Utlagatum, when the Sheriff maketh his warrant to his Undersheriff or Bayliff, &c. for the taking of the party Defen. it were good for him alſo to take Bond of his under Sheriff, or Bailiff, with condition to bring the Defend. to priſon, if he be arreſted or taken; and this would make good execution of this Proces: whereas now the Undersheriffs and Bayliffs, if they have taken a man upon a Capias Utlagatum, they will take money of both parties, (firſt of the Plaintiff to take the Defendant, and after of the Defendant to let him go again being taken, pretending that it is to reverſe the Utlary which they have nothing to do withall) the Defendant being taken thereupon, ought preſently to be put in priſon, and there to remain until ſome Attorney hath reverſed the Utlary for him; whereas no Undersheriff, nor Sheriffs Bailiff, ought to practiſe as an Attorney for the time they are in that Office. Wilk. & hic poſtea, cap. 117.

Auter Retornes ſur Capias Utlagat. ou Exigit.

Nihil, eſt bon Retorn (ſur Capias Vilagat.) lib. Intrac. 109. b.

Que les Coroners per abſent al Comit. Ideo, &c. Intr. 344. b. 336.

Que, ul Coroners fuer. la frq. un, q. refuſe de pronouncer, le utlar. 335.

Que ne fuerunt pluſors Countees. 335.

Quarto Exactus, & non habuit tempus plus. 335.

Superſedeas per un; & vers l'anter. 4. exactus, & non ſunt pluſors, Com. 336.

Superſed. per lun, & utlary vers l'anter. 336.

Multis modis poteſt dici captus & detentus, ſc. pro debito x.l. verſus ipſum recuperatum in tali curia.

Vel captus eſt per præceptum dom. regis.

Vel captus eſt ſuper recog' fact' in Cancellar.

Vel captus eſt ſuper appel' pro morte hominis.

Vel de roberia, &c.

Infraſcriptus R. V. captus fuit apud D. decimo die Maii anno infra- *Reſcous.*
ſcripto, per T. P. ballivum domini regis, & mei, virtute cujuſdam warranti, prætextu hujus brevis per me facti, & ſibi direct': Et ſuper hoc prædict' R. V. cum aliis ignotis vi & armis, viz. baculis, &c. in dictum ballivum inſultum fecerunt, & ſeipſum à cuſtodia prædict. ballivi reſcuſſ. & nunquam poſtea eundem. R. V. in balliva mea invenire potui. *Aliter.*

Executione iſtius brevis pater in quadam ſcedula huic brevi annex'.

Virtute brevis domini regis mihi directi, & huic ſcedulæ annex', feci *Scedula.*
quoddam warrant' meum cuidam I. M. ballivo meo itinerant', ad capiend' & arreſtand' E. G. in dicto brevi nominat' ſecundum exigen. ejuſd. brevis, Qui quidem ball. meus virtut' warrant' mei præd. nono die I. anno regni dom. *Jacobi* regis infraſcript' xx. apud D. in com. pred. capit & arreſt'

& arreſt' corpus pred. E. G. Et adtunc & ibidem ipſa E. G. in cuſtodia ſua fuit (non habuit) ſuper quo F. G. de D. prædict' in comitatu præd. gener. & T. M. de eiſdem villa & com. gen. adtunc & ibidem vi & armis, &c. in præd' ballivum meum inſultum fecerunt, & ipſum ball. meum adtunc & ibidem contra legem & conſuetud. regni dicti domini regis Angliæ, & contra voluntat. ipſius ballivi mei impriſonaver. & ipſum ballivum meum in priſona ibidem per ſpacium unius horæ adtunc detinuer. & viginti denarios in pecuniis numeratis, de bonis, catallis, & denar. ipſius ballivi mei adtunc & ibidem præd' T. M. cepit, ac præf. E. vi & armis præd. adtunc & ibidem à cuſtodia dicti ballivi mei ceper. & recuſſer: Necnon eadem E. ſeipſam adtunc & ibidem à cuſtodia ejuſdem ballivi mei reſcuſſit contra voluntat. dicti ballivi mei, & contra pacem dicti dom. regis nunc, &c. Et poſtea eadem. E. non fuit inventa in ball. mea.

Vide liber Intrac. f. 579.

Reſcous. Virtute iſtius brevis mihi directi feci quoddam warrant' cuidam R. P. ballivo meo hac vice itineranti, ad capiend. & arreſtand. infranom. T. L. ſecundum exigentiam iſtius brevis; qui quidem R. P. virtute warrant' prædict' poſtea, ſcilicet ſecundo die Maii anno regni domini regis infraſcript' viceſimo, apud B. in comitatu prædicto cepit corpus infranom. T. L. de B. præd. in dicto comitatu Cantabr. Qui quidem T. die, anno, & loco ſupradict', vi & armis in præf' R. P. ball. meum prædict. inſult' fecit, & ipſum verberavit, vulneravit, & maletractavit, ita quod de vita ejus deſperabatur. Et item T. adtunc & ibidem à cuſtodia pred. ballivi mei, & contra voluntatem ſuam receſſit, eſcapiavit, & recuſſum fecit contra pacem dicti dom. regis nunc, &c. Et poſtea idem T. L. non eſt inventus in ball. mea. Aliter.

Virtute iſtius brevis feci quoddam warrant' meum W. H. ballivo hundred. de H. qui mihi ſic reſpondit, quod ubi ipſe virtute warrant' præd. decimo die S. anno regni dom. regis infraſcript' viceſimo apud C. cepit quendam I. S. & ipſum uſque in caſtrum dom. regis de C. ducere voluiſſet, ibidem ſalvo cuſtodiend'. illuc vener. quid. I. T. & R. S. cum pluribus aliis ignot' vi & armis, arriat' modo guerrino, & à cuſtodia dicti ballivi mei apud præd. W. præd. I. S. ceper. & abduxer, Et ſic ob metum mortis ſuæ ipſam I. S. evadere permiſſit, Et ea de cauſa corpus I. S. præd. coram dom. rege ad diem & locum infracontent', ubicunq; &c. habere non poſſum, prout interius mihi præcipitur. Et ulterius vobis certifico, quod poſt præd. decimum diem, &c. prædict. I. S. non fuit invent' in balliva mea. Aliter, per ball' Hundr.

Virtute iſtius brevis mandavi I. S. ballivo meo libertat' de D. in com. præd' (qui habet plenum retorn. omnium brevium, præcept' & warrant' ſibi inde direct.) Qui quidem I. S. tali die & anno apud P. in comitatu præd' T. S. in brevi huic ſcedulæ annex' nominat', & virtute ejuſdem warrant. ſibi direct. cepit & arreſtavit, & ipſum T. S. in cuſtodia ſua occaſione prædict. adtunc & ibidem habuit & tenuit, ac quidam *Johan. C.* nuper de S. in comit. prædict. L. (aggregat. eis quam plur. aliis malefactor. ignotis, paciſq; domini regis perturbator.) ad numerum viginti perſonar. modo guerrin. arraiat. vi & armis, viz. glad' pugionibus, ſcut. & bacc. in ipſum ballivum meum adtunc & ibidem riotoſe inſultum fecerunt & ipſum verberaver' vulneraver. & maletractaver. ita quod de vita ejus deſperabat. & prædict. I. C. & alii, &c. ipſum T. S. extra cuſtod. dicti ballivi mei adtunc & ibid. ceperunt & reſcuſſer. & ad ſui juris ad largum ire permiſer. ac idem T. S. ſeipſum extra cuſtod. dicti ballivi adtunc & ibidem ſimiliter reſcuſſit, contra pacem dicti dom. regis. &c. Et poſtea idem T. non eſt inventus in balliva mea. Aliter de Reſcuſſ. & Riot.

Ego I. H. miles vic' virtute iſtius brevis feci quoddam warrant' I. B. & P. D. Aliter.

P. D. ball' meis hac vice itinerantibus ad arreſtand' & capiend' R.F. ad ſatisfaciend' infranominat' W.P. de debit. & damn. infra ſpecificat. prout interius mihi præcipit. virtute cujus warranti I. B. et P. D. ball' tali die et anno apud H. in com. præd. arreſtaver. prædict. R. F. prout per warrant. illud eis præcipiebatur, ac idem R. F. ac quidem G. F. de G. in com. prædict. cum aliis ignotis vi & armis, videlicet gladiis, baculis, &c. in prædictos I. B. & P. D. eiſdem die et anno apud H. in com' prædict' inſultum fecer. et ipſos male tractaver', et ad tunc et ibidem reſcuſſum fecer. virtute cujus recuſſ. idem R. F. a cuſtod' illa ad tunc et ibidem contra arreſtationem ſupradictam reſcuſſit, evaſit et eſcapiavit; qua propter præf. R. F. ad diem et locum infranomin. habere non poſſum; et ulterius vobis certifico, quod poſt eundem diem prædict. R. F. non fuit inventus in balliva mea.

Virtute iſtius brevis quoddam warrant' meum feci et direxi cuidam T. C. ballivo meo ad attachiand' infranomin. I. C. prætextu cujus idem T.C. nono die I. ann. regni domini regis infraſcript' viceſimo apud B. in com. infraſcr. cepit et arreſtavit pred. I.C. eum coram me ducere volens et intendens, ad faciend' et recipiend', prout in iſto brevi mihi præcipitur; Et poſtea videlicet dicto nono die I. ann. viceſimo ſupradicto, prædictus I.C. apud B. præd' in com' præd' in præd' T.C. ballivum meum inſultum fecit, Et ab eodem ballivo adtunc et ibidem fugit, evaſit et reſcuſſum fecit, Et poſtea eundem I. C. in balliva mea invenire non potui. *Aliter.*

But for theſe former Returns of a Reſcous (by ſome opinions) it ſeems they are not good, and that the Sheriff ſhall be Amerced for ſuch Returns; for the Sheriff is to bring the party at his peril, if it be in time of Peace: And he might have taken Poſſe Comitatus, to have aided him therein; And beſides, the Sheriff may have his Writ of Reſcous againſt the Offenders, and ſhall recover ſo much as he was Amerced. Vide 16. E. 3. Fitz. Retor. 110. & hic cap. 36.

And yet where the Sheriff ſhall return that the party hath been Reſcued, &c. per ignotos, it ſeemeth the Return is good; for then it doth not appear that he can have any Writ of Reſcous: Fitz. Retor. 110.

Capias Excommunicatum.

The Sheriff (or other Officer) to whom ſuch Writ of Excommunicat. Capiend. or other Proceſs ſhall be directed, needs not bring the body into the Kings Bench at the day of the Return; but ſhall only return the Writ thither, with Declaration briefly in what manner he hath ſerved and executed the ſame. Stat. 5. Eliz. 23.

If the Sheriff, &c. ſhall return Non eſt inventus, then a Capias ſhall be awarded with a Proclamation therein, commanding the Sheriff, &c. in the full County Court, or at the Aſſiſes, or quarter Seſſions, to make open Proclamation, ten days at leaſt before the Return thereof, that the party yield his body to Priſon within ſix days: And after the ſix days, the Sheriff, &c. ſhall make return what he hath done thereupon, &c. (the offenders to forfeit x. l. for ſuch default.) And ſo a Capias Infinite ſhall go out with the Proclamation; and a forfeiture of 20. l. for every other default, to be preſently eſtreated, &c. ibid.

If the Offendor yield his body, the Sheriff, &c. ſhall preſently commit him to Priſon, there to remain without Bail, &c. ibidem.

If the Sheriff, &c. do make an untrue Return upon any Capias in

a Writ de Excom. Cap. That the party hath not yielded his body upon any Proclamation made, where indeed he hath yielded, &c. he ſhall forfeit to the party grieved. 40. l. &c.

Alſo Note that if a Reſcous be made to the Sheriffs Servant, Bayliff Errant, or other Officer, it ſhall be returned as done unto the Sheriff himſelf; for the Arreſt is the Act of the Sheriff himſelf, and therefore the Reſcous to the ſervant is a Reſcous to the Sheriff himſelf. Br. Retor. 66. 17. Eliz. Dyer. 241. accordr. But if it had been the Bayliff of a Franchiſe or Liberty, the Return had been good; or elſe the Sheriff might there have returned, Quod nullum dedit reſponſ. Dyer 241. 39.H.6.Br.66.

And yet I have ſeen the report of a Caſe in Banc. 31. Eliz. where the Sheriff returned a Reſcous, Quod Mandavit ballivo hac vice tantum, qui cepit corpus, & *A reſcous luy del Bailiff*; and exception was taken to his Return, and the former Book, 39.H.6. alledged: But the Court held the Return to be good enough, by divers Preſidents; for notwithſtanding that the Reſcous to the Servant, or Bayliff, be a Reſcous to the Maſter himſelf; ſo as he may return it in his own name if he will; yet that is not compulſary, but that he may return it in the name of his Bayliff.

Vide plus hic poſtea tit' Retorne del habeas corpus.

CAP. 55.

Capias ad valentiam.

Upon this Writ the Sheriff is to ſummon the def. (ſc. the vouchee) to be before the Juſtices at the day mentioned in the Writ, &c. And he is to return the name of the ſummoners.

The Sheriff is alſo to ſeiſe the lands of the vouchee (ſc. to ſuch a proportion as the Writ mentioneth) into the Kings hands, by the view and valuation of lawfull men of that County, and is to return the certainty of the lands, and the day of ſuch his ſeiſure, together with the names of thoſe viewours, and of the ſummoners, under his ſeal, as it ſeemeth by the form of the Writ. Regiſt. 12.

And this ſeiſure muſt be of ſuch lands and tenements of the def. (or vouchee) as he hath in fee-ſimple by purchaſe, or otherwiſe, or as ſhall diſcend to him in feeſimple. Ibid.

Upon this Writ againſt divers, the Sheriff returned that one of them had nothing, &c. And that of the other he had taken according to the proportion: But for that the Sheriff cannot apportion without a Warrant, he was amerced. Fitz. Ret. 93.

Ceſſavit per biennium.

Ceſſavit per biennium. VIrtute, &c. Juſtic. infraſcript. certifico quod die Maij anno regni, &c. Cepi in manus domini regis 3. meſſuag. &c. infraſcript. per viſum *A. B. C. D. E. F.* & *G. H.* proborum & legalium hominum de balliva mea, prout interius mihi præcipitur.

Retorna

Retorna brevis ubi Clericus non habet laicum feodum.

Virtute istius brevis mihi directi Justic. infrascript. certificò, quod infranominatus *T. H.* clericus est beneficiatus in Episcopatu London. nullum habens laicum feodum in balliva mea ubi potest summon. Nec est inventus in eadem. *Clericus non habet laicum feodum.*

A. B. Ar' Vic.

Retorn. de Distringas versus Clericum. Vide hic retorn. de Distring. hic c. 56. *Distring. Clericum.*

Br. 124. Fitz. 23. In a Scire facias against a Chaplain (or Clerk that is beneficed) upon a recovery in a Quare impedit, the Sheriff ought not to return quod Clericus est beneficiatus nullum habens laicum feodum, &c. for this is not to be returned, but where a Distring. or Capias in debt, or trespass goeth out, which are a coertion: But in a Scire facias the Sheriff hath nothing to do but only to warn the party by his person: And yet if in a Scire facias the Sheriff returns, quod est Clericus beneficiatus, nullum habens laicum feodum, &c. Et quod non est inventus, &c. this is a good return; for then he cannot be summoned, if he can neither be found, nor hath lay-fee.

The Sheriff returneth that the Parson ante adventum brevis, or post receptionem brevis, or before the return of his Writ, had resigned his benefice, &c. Et quod non habet nec habuit bona neque catalla infra, &c. these seems to be good returns. See 2. E. 4. fol. 1. Br. 94. & 2. H. 7. fol. 10 sed 39. H. 6. Fitz. Ret. 30. contra.

In trespass, or debt, against a Clerk, Nihil habet, is a good returne: And in a Fieri fac. to have execution of arrerages of an annuity, the Sheriff ought to returne, quod nihil habet post receptionem brevis. Fitz. Retorn. 30.

In a Quid Juris clamat. the Sheriff ought not to returne, quod clericus est non habens laicum feodum, but he ought to distrain him upon the land in demand. Fitz. Ret. 59.

But note that Clerks or Ecclesiastical persons (in most cases) upon proces out against them, are to be summoned (or warned) by their person; or else if they have any lay-fee, by their land: And if the Officer cannot finde him to summon him by his person, nor that he hath any lay-fee whereupon to summon him, then the Sheriff may returne, quod est Clericus beneficiatus, Nullum habens laicum feodum, &c. Nec est inventus, &c. *Et donqs. le plt. avera bre. al eveſq; que il face vener ſon Clerk; & le eveſque luy ferra a vener per ſequeſtration del Egliſe.*

Corpus cum causa.

Upon a Corpus cum causa, it is a good return that the party is dead, 32. H. 6. 27. Br. 125. *Corpus cum causa.*

A corpus cum causa went out of the Kings Bench to the Sheriff of Yorke, to have a prisoner in his custody in the said Bench at a certain day; and the Archbishop of Yorke being President there, commanded the Sheriff that he should not deliver the prisoner, &c. and all this matter was returned by the Sheriff; and it was holden that the Sheriff should be grievously amerced for not executing the Writ; for he should have taken Posse Comitatus, &c. Cromp. author. des Courts fol. 78.

Auxi in le caſe avant dit fuit dit per ſig. Catlin chief Juſtice, que in 14 E. 3. bre. d'aver corps iſſiſt de Banco Regis, & apres le vic. ad Privy ſeal a luy direct per le Roy, luy certificant q. le Roy ad luy pardon, & per ceo luy commande de ſurceaſe de luy perſuer, & unc. in tant q. le vic. ne execute le bre. fuit amercia grievouſment; C. in ceo Court nous teignomas plea coram regina ipſa, per q. ceo eſt le plus hault Court le Roy (parlent ex. del Chancery ceo q. il. voile;) Et il dit ouſter q. ceo Court eſt de tiel dignity, que in ql. Priſon q. il ſoit, nous poyomus commande l'officer de ameſner luy icy: Et ſi home ſoit in le Tower per commandement del Councel, nous poyomus mannder per luy icy per bre. de Corpus cum cauſa direct al Conſtable del Tower, & il dit ouſter q. le Cardinal, ee'ant Chancellor d'Angliter, command un al fleet, & per Corpus cum cauſa fuit ameſne in cel Court in tps. (Fineux chief Juſtice, & jour done al Atturny le Roy per 2. jours adire quid poteſt, per q. ſerra liver, & per ceo q. de pt. rien dire, fuit diſmeſs: Mes il except le abſolute power de Roy d'Angliter, & parle de ſon Ordinary power, quant al execution de Juſtice; Et dit ouſter al Carus ſerjeant le Roy (que preia q. le vic. ſoit amerce) q. iſſint ſerra; Et que attachment iſſera de attacher le Cardinal, & le vic. pur ſon contamacy; & de meſme opinion fuit Juſtice Whidden & Corbet, & Southcot. Et Catlin dit in ceo caſe, que il. ne uſont de m're in le bre. per q. il mit per home, mes ceo nous reſervemus in ure. pectus, ces pt. eſtre per treaſon, ou grand conſpiracy. Cromp. ibid.

Nota ſi home condemne (& ſon corps miſe in priſon ſur execution) aveigne in Chancery per force del Corpus cum cauſa, il ne ſerra leſſa al bayle, mes ſerra miſe al priſon arere, ſi le vic. retorne ceo ſpecial matter, ſc. q. le priſoner eſt condemn per judgement done vers luy, &c. *Et ceo eſt per force del ſtat.* 2 H. 5. c. 2. Fitz. 251. e.

See more hereof in the return of Habeas corpus.

Retorna brevis orig. in conventione, per levyer fine, ou ant' ment.

Pleg. de prof. { *Jo. D.* / *Ri. R.* }

Sum. infranominat. { *I. D.* / *Ri. F.* } *R. S.*

Covenant. In a Writ of Covent to levy a fine, Nihil ſeems to be no good returne; for the Sheriff ought to ſummon him in terra petita. 10 H. 6. Fitz. Ret. 12. Br. Ret. 122. dit quere.

In Writs of Covenant the Sheriff may ſummon the defendant by his perſon. Br. Summons 1.

In other Writs of Covenant Nihil is a good returne. Fitz. Ret. 12.

Nota quod in breve de Conventione, Non fit breve de attachiamento, quia oportet quod partes compareant perſonaliter in curia. Regiſt. 165.

Alſo in this Writ, Mandavi ballivo libertatis, &c. may be returned. Intr. 133. b.

For that Clericus eſt nullum habens laicum feodum, Nec bona laica in balliva ſua unde aliq. demur. fieri poſſunt. Intr. 138.

CAP.

CAP. 56.

Retorna brevis original. in Debito. *Debt.*

Pleg' de proſ. { *Johan' Den.* / *Richard' Fen.*

Fitz. 119. b. Sum. infranominat. { *Johan. S.* / *Richard. G.* } *R. S.*

A. B. Ar' Vic.

And if the defendant be ſufficient, then thus:
Pleg. de proſequend. *I. S. R. M.*
Infranominat. *A. B.* nihil habet in balliva mea per quod ſummon. poteſt.

Or thus.

Aliter. Infranominati *A. B.* & *C. D.* (and if there be more defendants than two, then you muſt name but one, et cæteri def. infranominati) nihil habent, nec eorum alter nihil habet in balliva mea per quod ſummon. poſſunt.

A. B. Ar. Vic.

Other Returnes.

Attachiatus eſt per Pleg. 195. *On attache per bies.* 207.
Clericus eſt beneficiatus, &c. Inter. 189.
Mandavi ballivo, &c. Intr. 189.
Cepi bona per parcel, que remain per debt. de emptor. Intr. 164.
Nulla plura bona, &c. in balliva ſua unde reſiduum, &c. vide ibid.
Nul biez. ou ters, &c. ibid.
Non eſt inventus, *retorne ſes* Capias, &c. Or Cepi Corpus. Plus hic cap. 53.
And yet the former returne of Nihil habent, is good without ſaying, Nec eorum alter Nihil habet, &c.
In debt (or treſpaſs) Nihil habet is a good returne, without ſaying, Nec habuit poſt receptionem brevis, or Nec habuit die quo, &c. *ces ſerra intend.* 39. H. 6. Fitz. Ret. 30.
Note that in ſome caſes the Plaintiffs Atturnies do uſe to return the Original; as if the Defendant hath no freehold within the Shire where he is ſued, the Atturney will returne the original in debt, or treſpaſs, in this ſort:

Pleg. de proſequend. { *Johan. Doe.* / *Ric. Roe.* }

Br. 84. But this is not warrantable without the Sheriffs conſent.
In debt it is no return that the defendant hath payd the debt, 2 H. 7. fol. 8. Fitz. Ret. 34.

Deciis

Decies tantum.

Decies tantum. Iuſtic. infraſcr. certifico, quod infranominatum *A. B.* ad diem & locum infra content. coram vobis parat. habeo, ad faciendum & recipiendum quod curia domini regis infraſcript. de eo conſideraverit juxta formam iſtius brevis.

Detinue. In a Writ of Diſtring. ad deliberand. &c. in Detinue, it ſeemeth to be no good return that there are no ſuch goods. Br. 89.

In Detinue where it is awarded that the Plaintif ſhall recover the thing demanded, he ſhall have a Diſtring. ad liberandum, &c. and the Sheriff may thereupon return iſſues, or nihil, as the truth is. Br. Charters de terr. 34. Liber Intrac. fol. 212. a. &c. 22 H. 6. 41.

In Detinue the Sheriff is to take Pledges of the Plaintif de proſequendo: and he muſt alſo ſummon the Defendants to appear at the day.

Nota q. in Detinue, judgement ſerra done que le plt. recovera les Chattels & damages, & execution ſa. agard per Diſtr. vers le def. a deliver les Chattels (& auter execution n'avera il de les Chattels) & del damages il avera Fieri facias. 6. R. 2. N. bre. 165.

And (upon a Writ to enquire of the value) the Sheriff is to enquire by a Jury, and to returne what damages the Plaintiff hath ſuſtained as well by occaſion of the detention, as alſo what Coſts of ſuite, &c. And further if the Defendant ſhall not deliver or hath not delivered to the Plaintif the goods detained, then to enquire of and to returne the true value of the ſame goods. Liber. Intr. fol. 212. a. 215. d. 218. c.

The Sheriff may returne Mandavi ballivo libertatis, &c. qui nullum dedit reſponſum. Liber Intr. fol. 215. c.

He may return { Non eſt inventus, nec aliquem habet, &c. Intr. 217. / Nihil habet, &c. nec eſt inventus. Intr. 218.

Note that in an action of debt againſt executors, if it ſhall appear that they have paid legacies before debts, or ſhall pay debts upon ſimple contracts, before debts upon ſpecialties be diſcharged, or ſhall pay debts before they be due, &c. theſe are a devaſting by the executors: and thereupon judgement ſhall be given againſt the executors that the Plaintif ſhall recover againſt them *de biens le mort*; and if there be not ſufficient of the Teſtators goods left, &c. then execution ſhall be de bonis propriis, upon a Scire facias againſt the executors. Vide Br. Exec. 71. 81.

So if the executors ſhall plead *ne unques executors*, &c. and that be found againſt them, judgement ſhall be given againſt them ut ſupra. Br. exec. 108.

Retorn. de Fieri facias ſur Devaſtavit.

Devaſtavit. VIrtute iſtius brevis mihi directi, cepi in manus meas diverſa bona & catalla quæ fuerunt infranominat. *H. S.* tempore mortis ſuæ, in manibus infranominat. *R. O.* & *K.* uxoris ejus execut. teſtamen. præd. *H.* adminiſtrand. exiſten. ad valenc. 37. l. parcell. deb. infraſcript. quæ quidem bona & catalla remanent in cuſtodia mea pro defectu emptorum. Et ulterius Juſtic. infraſcript. certifico quod præd. *R. O.* & *K.* diverſa bona & catalla quæ fuer. præd. *H.* tempore mortis ſuæ ad valenc. reſid. deb. & Wilk. 62.

& dampn. infraſpecificat. vendiderunt, & devaſtaver. & denarios inde provenient. ad uſus ſuos proprios converter. Ita quod reſid. deb. et dampn. infraſpec. de bonis et catallis cujuſdam *H. S.* levari ſeu fieri facere non poſſum. Et ulterius Juſtic. præd. certifico quod prædict. *R. O.* & *K.* uxor ejus nulla habent bona ſeu catalla de bonis & catallis ſuis propriis in balliva mea unde reſid. deb. et dampnum infraſpecificat. aut aliquam inde parcell, fieri facere poſſum prout interius mihi præcipitur.

Plus hic poſtea Retorne de fieri fac. cap. 61.

Diſceit.

F.N.b. 98.d. In a Writ of Diſceit if the Sheriff returneth the one ſummoner to be dead, it is good, and yet the other ſummoner ſhall be examined, &c. And if it be found that the Sheriff made no ſummons, &c. the party ſhall be reſtored to his land. *Diſceit.*

Diſtringas, vers le def.

If the defendant be ſufficient, then thus:

Manucapt. infranom. *I. F.* } *J. Doo.* *Diſtr.*
Exit, 3. s. 4. d. } *R. Roo.*

Nihil. Note that the Sheriff muſt retorne hereupon reaſonable iſſues. See hic c. 89.

I. F. infranominat. nihil habet in balliva mea per quod, nec ubi poteſt diſtringi.

I. F. infranominatus Nihil habet in terris, tenementis, & hered. infraſcript. per quod ipſum Diſtringere poſſum. *Aliter.*

En bre. de accompt, ſes le Diſtring. le vic' retorne Main; ernors, & quod non ſunt exitus, & eſt. adjn. bo. retorne, Fitz. Ret. 120.

In an attaint upon the Diſtring. the Sheriff cannot return that the defendant is dead. Br. Ret. 1. 18. H. 8. 5. otherwiſe he may.

In debt upon the Diſtring. the Sheriff returned Mandavi ballivo libertatis, &c. qui nullum dedit reſponſum; and for that he did not further return quod null. habet exitus in balliva mea, the Sheriff was amerced. Br. Ret. 23.

xl. d. xl. d.

T. D. A. R. &c. diſtrict' ſunt, et quilibet eorum diſtrictus eſt, per terr. et catall' ſua fecund' formam hujus brevis, unde exitus prout patet ſuperius in eorum capitibus, & manucapti ſunt, & quilibet eorum manucaptus eſt per ſe, viz. per *I. D. I. S. P. H.* quod ſint, & eorum quilibet ſit ad diem et locum infraſcr' juxta tenorem hujus brevis, &c. *Vers pluſors.*

xl. d.

A. quæ fuit uxor *B. R.* infraſcript' executrix teſtamenti pf. *Vers execut.*

xl. d. xl. d.

B. R. I. S. alius executor teſtamenti prædict' *B.* & *T. S.* tertius execut' teſtamenti præd. *B.* diſtricti ſunt, et eorum quilibet per ſe ſeparatim diſtr' eſt, juxta formam huj' brevis unde exit' prout patet ſuperius in capitibus eorundem; Et eorum quilibet manucaptus eſt per ſe, viz. per quatuor manucaptores nomine *A. B. C. D. E. F.* & *G. H.* Et non ſunt plures executores teſtamenti ejuſdem *B.* nec hæredes ejus fuerunt in comitatu C. prout aliquo modo ad preſens conſtare mihi poteſt.

Diſtr. eſt per Catalla ad valenc. 20. d. Intr.

Pleg. de proſeq. *I. D. R. R.*

A. B.

Sur le 2. on 3. distr.

A. B. infrasc' nihil habet in balliva mea ultra exitum prius forisfactum, per quod nec ubi distringi potest, prout mihi aliquo modo * constare potest ad præsens. Nihil. * Quære de cest retorne hic fol.

Vers. Cler'.

W. D. Archidecanus R. nihil habet in balliva mea de laico feodo per quod, nec ubi distringi, prænunir. seu attachiari potest aliquo modo prout ad præsens mihi constare potest.

And yet where the Proces is to distrain a Clerk, the Sheriff must summon him by his person, or by his land if he hath any lay-fee. Finch. 135. *Averment*, sc. *si le vic' retorne*, Quod est clericus beneficatus, non habens laicum feodum, *la Proces isser al ordinary a faire luy de vener, per lissues de son benefice.*

Tarde.

Quod distringend' infrascript' *A. B.* essendi coram Justic' infrascript' ad diem & locum infracontent', istud breve adeo tarde mihi deliberat' fuit, quod propter temporis brevitatem executionem inde facere non potui.

Note that in a Distr. per omnes terras suas, ita quod habeas corpus ejus, &c. the Sheriff must return issues (upon the defendant) and not distrinxi, &c. vide hic c. 36. Br. 24.

In debt or trespass upon the Distring. the Sheriff returned but 6. d. in issues, and was therefore amerced; for that the issues of the defendant was less then the charges of the plaintifs Writ of Distring. Fitz. Amerc. 3. Br. 120. Plus hic, cap. 89.

Destr' Jur.

Return de Distring. Jurat'. See hic postea Retorn. de Venire facias.

Although the words of the Distringas be, quod Distr. per omnes terras & Catalla sua in balliva tua; yet the Sheriff ought to distrain him, but reasonably, and not according to the words of the Writ. Keil. 117.

Dower.

Dower.

Admeasurement de Dower. Vide hic antea tit. Admeasurement.

Retorne de summ. in Dose.

Pleg. de prosequend. { *J. Doo.* / *R. Roo.* }

Sum. infranom. { *I. H.* / *I. W.* / *W. C.* }

Et ad maxime usuale ostium Ecclesiæ Parochialis de P. infrascript. super diem Dominicum, scilicet quarto die Julii, anno infrascript' immediate post divinum servitium, nulla prædicatione ad tunc & ibidem existen. publice proclam. feci secundum formam statuti, prout istud breve in se exigit et requirit. Stat. 31. Eliz. cap. 3.

A. B. Armig' Vic.

So that upon this Writ the Sheriff must first summon the Defend. upon the Land.

After he is to Proclaim the summons at the Church-door of the Parish, where the Land lyeth.

And then he must make this Return as before.

And yet a summons to the person of the Defend. seemeth sufficient without

without either Summons upon the Land, or Proclamation at the Church-dor.

Retorne de Petit cape in Dower.

VIrtute, &c. tali die et anno cepi in manus domini regis tertiam partem tenementorum infraſpec' cum pertin. prout interius mihi præcipitur.

A.B. Armig. Vic'.

Upon the Petit Cape, the Sheriff muſt Summon the Tenant to anſwer his default only; and not to anſwer to the demandant.

And upon the Petite Cape, the Sheriff is to ſeize the Lands into the Kings hands fifteen dayes before the Return, Vide Fitz. Grund Cape 19. Br. ibid. 36.

Retorna brevis de viſu in Dower.

IUſtic' infraſcript', certifico quod virtute iſtius brevis mihi direct. habere feci infranom. *A.B.* viſum de tertia parte tenementorum infraſpec' in præſent' *N. C. R. D. W. B.* et *C. D.* quatuor milit' ex illis qui viſ. illi interfuerunt. Et ulterius certifico quod dicti quatuor milit' præd. quod ſint coram Juſtic' infraſcr' ad diem et locum infracontent' ad teſtificand' viſum illum prout per breve præd. mihi præcipitur.

A.B. Armig' Vic.

En brev. de Donor. le demand ſt. del 3. part del Office, &c. le view ſt. demand de ceo que part eſtre miſe in view, ſc. le place on le Office fuit, &c. Fitz. view. 90.

Dower le Demand. fuit del moyety de, 20. l. ut. Et un meaſon & un Carne del terr. dont ceo ut eſt iſſuant, ſt. miſe ei view. Fitz. Dower 113.

Retorna brevis de ſeiſina in Dote.

Executio iſtius brevis patet in quadam ſcedula huic brevi annex'

IUſtic' domini regis Certifico quod virtute brevis domini regis mihi directi et huic ſcedul' annex' decimo die A. anno, &c. habere feci *P.B.* vid. in brevi præd. nominat', plenar. ſeiſinam de tertia parte manerii de B. cum pertinen. in eodem brevi ſpec', viz. de una aula et coquina, de duob' ſhopis in tenur. dicti I. cum liber. ingreſſ. et regreſſ. ab et ad eaſdem, nec non ſuperiori parte domus manſional' in tenura E. C. ab introitu verſus Auſtral. ac de uno clauſo ſeperali voc' H. continen' per eſtimac' quinque acr', ac de quatuor acr' paſturæ jacen' in boreal' fine, unius clauſi voc' B. et de una acr. paſturæ voc' C. in brevi præd. ſpec' tenend. perf. P. B. in ſeperali per metas et bondas, nomine totius dotis ipſius P. ipſam P. contingen. de toto manerio in dicto brevi ſpec' prout per breve predict. mihi præcipitur. *Seiſina in Dower.*

A.B. Armig. Vic.

Executio iſtius brevis patet in quadam ſcedula huic brevi annex'.

VIrtute, &c. et huic ſcedulæ annex' tali die & anno habere feci I. B. vid. in præd.br.nomin. plenariam ſeiſinam de tertia parte manerii de B.cum pertin'in eodem brevi ſpecificat', viz.&c. (*& reherſe les particulars* ut in brevi) tenend.perf.I.B.in ſeperal' per metas et bondas nomine totius dotis ipſius I.ipſam I.contingen.de toto manerio in dicto brevi ſpecific' prout per breve pred.mihi præcipitur.

Nota que fe. que Recov. Dower, ne poet entr, mez doit aver ſeiſin deliver a luy per le vic. Plo.529.Co.L.34.b.

Upon an *Habere facias Seiſinam in Dote, de tertia parte, &c.* the Sheriff returned that he offered to the demandant, the Seiſin *de Tertia parte Tenementorum predictor.* (and ſhewed in certain the parcels which ſhould make the third part) by mæts and bounds in ſeverally, according to the tenor of the Writ, and that the Demandant refuſed to receive them of him; this was holden to be a good return.

Et icy nient obſtant le refuſal del demandant uncer fuit tenus que le Entree le demandant à touts temps apres fuit Congeable, eo que le certenty appiert. Dyer 278.

But if the Sheriff in the beginning returns, *Quod habere fecit Seiſinam*, and ſhews the parcels, *Qua omnia obtuli deliberari, &c. ſed ipſe recipere recuſavit*, this is repugnant, and thereſore void. Dyer.278.

If a woman recover in a Writ of Dower, the Sheriff may put her in Execution or Seiſin by a Clod, or by graſs growing upon the Land, or by any beaſt being thereupon, &c. 40.E.3. Fitz.Dower.38. *Mez le fee ne part Baſer les beaſts, &c.*

In a Writ of Dower, a Writ went to the Sheriff to deliver the wife, x. marks, per An. in Land, and Rent, for her Dower, and the Sheriff delivered her in Land 5. marks in yearly value, and 5. marks in Rent iſſuing out of the Land, whereof ſhe was Dowable, and it was holden a good Indowment. Br.Dower.61.

In Dower of three Pannors, or three Acres, the Sheriff may aſſign to the Wife one Pannor, or one Acre for all; and he may aſsign the whole Pannor with the Advouſon; or may aſsign the third part of each, and the third preſentment. 12. E. 4. Br. Dower. 72. Ph. 65,66.

If the Sheriff ſhall deliver to the Wife, the moyety of the Lands whereof ſhe demandeth Dower, it ſeemeth no remedy againſt him, Br. Ex.tent.13.& Fitz.Execut.265.

And note that in Dower, the Sheriff is to make Execution, and put the wife in Execution of the third part by Mets and bounds, if he can, 3. Eliz. accordt. & Co. L. 34. & 32. And here the Sheriff is a Judge, and may execute the ſame himſelf, and ſhall not need to do it per Sacramentum, xii. &c. But, if the Sheriff and the wife ſhall come together to the Land, the Sheriff may not make Execution by theſe words, or in this manner, ſc. I deliver thee ſeiſin of the third part of the Land according to the Recovery; for that is not good. Fitz. Scire fac.92.

In a Writ *de Seiſina in Dote* directed to the Sheriff, it is no anſwer nor good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Record ſuppoſeth, or mentioneth to be Tenant. Plo.Mauxels, Caſe, fol.14.

Sur

Sur Recovery del. 3. part del Mannor in Dower, le vic. aſſigne al Fee un Coppihold, ove autres ters. Dyer 251.

In ſome Caſes the wife cannot have her Dower aſsigned by Mets and Bounds, but muſt hold her Dower *per my et per tot in Common.* As of the profits of a Mill, or of a Wood, which Coparceners hold, &c. Fitz. Avowry 91. Or of a Common of Paſture. Fitz. Entr. 75. Aſſiſe 435. Or of an Office, or of Lands held in Common. Fitz. 149. 1. K. And yet Co. L. 32. She may have a third part of the profits aſsigned to her. Vide.

Retorn' brevis ad inquirend' de dampnis in Dote, ubi tenens obiit ſeiſitus.

Executio iſtius brevis patet in quadam Inquiſic' huic brevi annex'.

Inquiſitio indentata capta apud Cantabr. in Com. præd. duodecimo die Jan. anno, &c. coram me A.B. armig. vicecom. com præd. virtute brevis domini regis mihi directi, et huic inquiſition. annex' per ſacramentum C. D. E. F. G. H. &c. (ad numerum duodecim ad minus) qui dicunt ſuper ſacrament. ſuum, quod infranominat. W. K. quinto die Januar. anno, &c. apud K. in com. pred. obiit ſeiſitus in dominico ſuo ut de feodo, de et in tenentis infraſpec', Et quod tenement' pred. ſunt clari ann. valor. in omnibus exit. ultr. repriſ. xx. s. Et quod ſex anni et tria quarteria unius anni delabuntur, à tempore mortis præd. W.K. Et quod infranom. I.D. ſuſtinuit dampna occaſione dotis ſuæ infraſpec' ad valenc' x. l. In cujus rei teſtimon. tam ego præf. vic' quam Jur. prædict. huic inquiſic' ſigill' noſtra alternatim appoſuimus, die, ann. et loco ſupradict. &c. *Inquir. de dampnis in dote. Cantabr.*

A.B. armig' Vic'.

Upon a Writ to Enquire of Damages, if the Jury will finde no Damages, and the Sheriff maketh his return accordingly; although ſuch Return be not good, yet the Sheriff ſhall not be amerced for this default of the Jury. Br. Retor. 26. Fitz. Ret. 66.

And yet by others it is a good return, that the Jury gave no damages; for the Sheriff returneth what they did. 44. E. 3. 3. Finch. 229.

7 H. 4. Br. 106. In a Writ of Right a Writ de Mag. Aſſiſa eligenda, went to the Sheriff to ſummon and return four Knights before the Juſtices of Aſſiſe, to chooſe the grand Aſſize, returnable ſuch a day, and the Sheriff returned that there were no Knights but Burgeſſes; whereupon the Sheriff was amerced, and another Writ went out, &c. and the four Knights were demanded, who came to the Barre with their Swords girt about them, &c. And ſo it ſeemeth (by the opinion of Mr. Brook) that the Sheriff may return them Knights, although they be no Knights. See the like hic antea fol. Plus hic cap. 86. Vide Co. L. 294. that if there be not four Knights, the next to them in the County ſhall be taken. *Brief de droit.*

39. E. 3. 2. br. 121. In a Writ of Right the Sheriff returned two Knights, and two Serjeants, or Eſquires, to chooſe the grand Aſsiſe; and it was holden a good return of two Knights and two Serjeants (or Eſquires:) But then the Sheriff muſt return that there were no more Knights within the ſame County: but to return two Knights and two Serjeants, for that there were no more Knights within the ſame County, which were not of kindred to the Parties, was holden to be an inſufficient return; for that ſhould have come in by the challenge of the parties. Vide Fitz.

Retor. 60. And yet Quære for that the four Knights Electors are not to be challenged. Co. L. 294.

Returns in Br. de Droit. { *Q. le Plt. invenit ſibi pleg. de clamore ſuo proſeq. & vid. &c.* / *Q. le Def. Summonet. ſint per, &c.* ——— *Intr.* 243.

The Jury in a Writ of Right is called the Grand Aſsiſe, being four Knights, or others, in default of Knights, chooſing a Jury of vii. unto them. Finch. 412.

Note where the four Knights had choſen 16. Knights to have the Grand Aſsiſe, and the Writ went out to Summon them, the Sheriff returned, that there were not ſo many Knights in the County, as the four had choſen. Fitz. Trial. 97. Br. Jurors 45.

If the Plea be remoued by Pone out of the County into the Court of Common Pleas, the Sheriff needeth not to Return the Teſt, whereby the Plea was remoued out of the Lords Court, to the County Court, &c. Fitz. Record. 10. 10. E. 3.

The Return of the Bayliff of the Court may be thus, Quod pred. T. (the Defendant) Nihil habet in balliva ſua per quod poteſt attachiari. Nec habet ballivum, nec inventus eſt. Liber Intrac. fol. 242. b.

CAP. 57.

Ætate probanda.

IN a Writ de Ætate probanda awarded to the Sheriff, to enquire of the age of the Kings Ward (who is come to his full age) it is required by Law, that every one that ſhall paſs in that Enqueſt ſhall be of the age of 42. years: The Law intending thereby that they and every one of them ſhould be of full age, at the birth of ſuch Ward, becauſe that ſuch (in all likelihood) habe better knowledge therein then others of leſſer age habe, or can habe. And the Heir that is in Ward, is to enform the Enqueſt by certain ſigns and tokens of the time of his birth: *C'o. adire, que in meſme l'an, la fuit un grand tempeſt, ou un grand Plague, vel ſimil.* which ſigns he might hear from his Parents, &c. And which ſigns ſo given in evidence ſhall alſo be returned by the Sheriff, as well as the principal matter. 21. R. 2. Fitz. Livery 5. & Stamf. 79. & Br. Jurors 42.

But Quere whether this be ſo in uſe at this day, or no: Or whether the Church Book where he was Baptized, be not a more material and more ſufficient proof of his age; and ſo that it now ſhall not be ſo needfull to habe the whole Enqueſt of the age of fourty three years as aforeſaid. Vide Fitz. 257. the form of the Writ directed to the Sheriff to return a Jury before Commiſsioners to this purpoſe: But yet again the form of the Writ directed to the Eſcheator in ſuch Caſe, ſeemeth to imply that the Jurors ſhould be of ſuch age or years, that they may habe knowledge of the birth and age of the Ward; the ſame Writ being in theſe words, Precipimus quod, &c. probationem illam per Sacram.

pro-

proborum hominum,&c. per quos probatio illa Capi, & veritas ætatis melius ſciri poterit & inquiri Capias, &c. Fitz. 253. 254. Old Na. Br. 159.

Now for the number of the Jury to inquire of the Age of the Kings Ward. See hic cap. 86.

Ejectione firmæ.

Plegii de Proſequendo { *Johannes Doo.* *Rich. Roo.*

Infranominatus A. B. attach. eſt per centum oves, precii viginti librarum. Dz Attachiat. eſt per Pleg. B.C.D.E.

Infranominati C.D.& E.F. nihil habent in balliva mea per q. attachiari poſſunt.

Eligend' Coronator.'

AD com' meum tent' (tali die & anno) in pleno com' prædict', virtute iſtius brevis, de aſſenſu ejuſdem com. loco P.H. infranominat' (qui diem clauſit extremum) elegi Coronat' viz. I.W. qui (prout moris eſt) ſacramen. præſtitit corporal' quod ipſe ea faciet, & conſervaverit quæ ad offic' coron. in com. pred. pertinen. faciend', prout interius mihi precipitur, &c. *Eligend. Coronator.*

Eligend' Milit' Parliament.'

Virtute iſtius brevis mihi directi, in pleno Comitat. meo tent. apud Cantabr. tali die, &c. Anno, per aſſenſum ejuſdem Comitatus Eligi feci duos milites de Com. meo pred. vid. E.P. & I.C. ad faciend. prout iſtud breve in ſe exigit & requirit.

Aliter. Eligend. milit Parliament.

Virtute iſtius br. mihi directi, ad primum Comitat. meum poſt receptionem ejuſdem brevis, & in pleno Comit. illo, tent. apud. C. tali die & Anno, Eligi feci duos milites gladiis cinctos magis idoneos, & diſcretos de com' meo præd', viz. W. F. & I.S. qui quidem milites plenam & ſufficient' poteſtatem pro com' (or pro ſe, & Communitate Comitatus) præd' habeant, ad faciend' & conſentiend' hiis quæ ad diem & locum infracont' de communi conſilio regni Ang. ordinat' contiger. & prædict. W. F. & I.S. manucapt' ſunt per I.P. W.B. I.D. & R.N. ad eſſend' ad Parliament' dom' regis apud Weſtm. ad diem infracontent', ad faciend' prout iſtud breve in ſe exigit et requirit. Feci etiam præceptum virtute hujus brevis I. P. et W.S. ball' libertat. villæ de—in Com. meo, quod de eodem burgo de C. eligi fecerent duos Burgenſes de diſcretior. et magis ſufficient' quod ſint ad Parliamentum dicti domini regis ad diem et locum infracontent', ad faciend' et conſentiend' ut præd' eſt: qui quidem ballivi ſic mihi reſpondent quod eligi fecerunt de præd. burgo de C. duos Burgenſes diſcretos, et magis ſufficient' ad eſſend. ad Parliament. prædict. viz. S. W. et R.W. ad faciend. et conſentiendum ut ſupradictum eſt.

Virtute etiam iſtius brevis proclamari feci omnia in iſto brevi content. ſecundum formam et effectum hujus brevis, prout hoc breve in ſe exigit et requirit.

Reſiduum vero executionis iſtius brevis patet in quibuſdam Indenturis huic brevi annex.

Eligend.

Eligend. Burg. Parliament'.

Eligend. Burg. Parliament'.

VIrtute,&c. ad proxim. com. meum poſt receptionem ejuſdem tent. apud C. tali die & ann. in pleno comitat. illo proclam' feci omnia in iſto brevi content. ſecundum formam & effectum hujus brevis prout, &c. Reſid. vero executionis iſtius brevis patet in quibuſdam Indentur. huic brevi conſut'.

Indenture.

Hæc Indentura facta tali die & anno inter A. B. Milit. vic. com. C. ex una parte & * I. D. & C. B. &c. ex altera parte Teſtat. quod ſecund. formam brevis, huic Indentur. conſ. (fact. proclamat. in pleno com. meo tent. apud C. tali die & anno prædict) I. D. & C. B. & alii qui proclamac. prædict. in pleno com. prædict. interfuer. ſecundum formam ſtatutorum in brevi prædict. ſpecific. & ſecundum exigen. brevis illius, ad elig. A. D. & I. A. eſſend. Burgenſ. civitatis prædict. ad Parliamentum in eodem brevi ſpecificat. qui plenam & ſufficientem poteſtatem pro ſe & communitate Civitat. prædict. habent ad faciend. et conſentiend. prout breve illud in ſe exigit et requirit. In cujus rei teſtimonium partes prædict. hiis Indent. ſigilla ſua alternatim appoſuer. Datum die Ap. Anno, &c.

* These perſons muſt be free Citizens or Burgeſſes of the Town, and ſuch as were chooſers. See his c 92.

The like Indentures are to be made between the Sheriff and the Freeholders of the Shire, upon the chooſing of their Knights for the Parliament, and word for word, as the former (mutatis mutandis) until you come to theſe words, Elegi A. D. et I. A. milites, gladiis cinctos pro Comitat. predicto, ad Eſſend. ad Parliamentum in eodem brevi ſpecificat. Qui plenam et ſufficientem poteſtatem pro ſe et Communitat. Comitatus præd. habent, &c. ut ſupra.

Eligend' virid. foreſtæ.

Eligend' virid. foreſtæ.

DOmino Regi certifico quod infra nominatus I. H. ante advent. iſtius brevis mihi directi mortuus fuit, quodque ego poſt receptionem iſtius brevis mihi directi, in pleno com. meo tent. apud C. in com. meo 29. die Maii anno infraſcript. ex aſſenſu ejuſdem com. loco predict. I. elegi feci quendam N. S. Armig. viridarium foreſtæ de B. infraſcript. ad faciend. prout breve iſtud in ſe exigit et requirit.

Retor. Brevis ad Inquirend. de Dampnis.

Executio iſtius brevis patet in quadam inquiſitione huic brevi annexa.

Enquirie de dampnis. Vide hic Treſpaſs.

Inquiſitio indentat' capta apud C. in Comit' Cantabrig. tali die et anno, coram A. B. Armig. vic' ejuſdem com. virtute cujuſdam brevis dom. regis eidem vic. direct. et huic inquiſitioni conſut. per ſacrament. R. S. M. G. &c. (ad numerum 12. Jurator.) qui dicunt ſuper ſacramen. ſuum quod A. P. in brevi huic inquiſitioni conſut. nominat. ſuſtinuit dampna occaſione tranſgreſſ. per I. H. in prædicto brevi nominat. prout in eodem brevi fit mentio ad xl. s. Et pro miſis et cuſtagiis ipſius A. P. per ipſum circa ſectam ſuam in hac parte appoſitis ad xl. s. In cujus rei, &c.

CAP. 58.

Retorne de Elegit.

EXecutio iſtius brevis patet in quadam inquiſitione huic brevi annexa.

A.B. Armig.vic.

Cantab. Inquiſitio Indentat' capta apud *L.* in com. prædict' decimo die Junii anno, &c. coram me *A. B.* Armig' vic' com. prædict' virtute brevis Domini Regis mihi direct' et huic inquiſitioni annex', per ſacrament' *T.B.*&c. (et ſic xij.plur' ad minus) qui dicunt ſuper ſacrament' ſuum, quod *B.C.* in brevi prædict' nominat. tali die et anno, &c. fuit ſeiſit. in dominico ſuo ut de fœdo, de et in uno meſſuag' vocat. &c. cum pertin. jacent' et exiſtent' in *L.* in com. prædict' modo in occupatione *A.I.* vid. clari annui valoris in omnibus exit. ultra repriſ. xl. s. Ac etiam de et in uno gardino cum pertinen. vocat. &c. in *L.* prædict' clari annui valoris in omnibus exit. ultra repriſ. xx. s. Ac etiam de & in uno alio meſſuagio cum pertinen. in *L.* pred. ſcituat. jacen' et exiſten' prope, &c. nuper terr' cujuſdam *R. A.* defuncti modo in occupatione *B.C.* vel aſſign. ſuorum, ſimul cum omnibus gardinis et edificiis eidem meſſuagio ſpectant. ſive pertin', clari annui valoris in omnibus exitibus ultra repriſ. v.l. Ac etiam de et in uno alio meſſuagio vocat. &c. in *L.* prædict' in tenura præd' *B. C.* clari annui valoris in omnibus exitibus ultra repriſ. dece. ſolid'. Quæ omnia et ſingula, præd' *B. C.* nuper perquiſivit ſibi et hæred' ſuis de quibuſdam *N. S.* et *Al.* uxore ejus (unius filiarum et cohæred' præd' *R. G.*) Quod quidem meſſuag. in tenura prædict' *C.D.* una cum gardino eidem meſſuag. jacen' et ſpect' cum omnibus et ſingulis ſuis pertinen' pro medietate omnium terr' et tenementor' pred' ego præfat. vic. deliberari feci *R. S.* in brevi prædict. nominat. tenend. ſibi et aſſignat. ſuis juxta formam ſtatuti inde proviſ. ut liber. tent. ſuum, quouſque debitum ſuum C.l. una cum xv.s. pro dampnis ſuis in brevi prædic. mentionat. plenar. inde levaverit, prout breve predic. in ſe exigit et requirit: Et ulterius Jurat. prædic. ſuper ſacramentum ſuum prædict. dicunt quod prædict. *B. C.* nulla alia ſive plura bona habet ſeu die recog. deb. prædict. or die judicii habuit bona aut catalla, terras ſive tenenta in com. prædict. ad eorum noticiam. In cujus rei teſtimonium, tam ego præfat. vic. quam Jurat. prædict. huic Inquiſitioni ſigilla noſtra alternatim appoſuimus, die, anno et loco, ſupradict. &c. *Elegit.*

A.B. Armig. vic.

Virtute iſtius brevis ego *A.B.* vic. com. infraſcript. (tali die et anno) liberavi *I.B.* medietatem maneriorum in inquiſitione huic brevi conſut. ſpecificat. cum pertinent. per extent' in dicta Inquiſitione fact' tenend. ſibi et aſſig. ſuis, ut liberum tenementum ſuum, quouſque idem *I. B.* debitum et damp. ſua infraſcript. levaverit, prout interius mihi præcipitur. *Aliter.*

Virtute iſtius brevis (tali die et anno) liberari feci infranominat. A.B. medietat. *Aliter.*

medietat' maner' de S. cum pertinentis, extent' ad annuum valorem quatuor librarum ſterlingorum in omnibus exitibus ultra repriſ. p. 12. Jur' in Inquiſitione huic brevi conſut' nominat', de quo quidem manerio cum pertinen' B. G. & E. uxor ejus fuerunt inde ſeiſiti ut in jure ipſius E. in fœdo ut de libero tenemento, die captionis Inquiſitionis prædict', prout in eadem compertum eſt, Habend' & tenend' eandem medietatem manerii prædict' cum pertinen', ſic extentam, prædict' A. B. & aſſign' ſuis ut liberum tenement' ſuum, quousq; infraſpec' 4. libras inde levaverit juxta formam iſtius brevis, Reſid. verò execut. iſtius brevis patet in quadam Inquiſ. huic brevi conſut. &c.

Upon an Elegit againſt him that hath two mannors, the Sheriff may deliver the one mannor to the Plaintiff in the name of the moiety of all, and is not bound to deliver the moiety of each mannor; And ſo of two acres of land; but this ſeemeth to be where the two mannors or two acres be of equal value. Br. Elegit. 14. 12. E. 4.

Sur Elegit, per ceo q. appiert ſur le inquiſion q. le def. ad convey ſon terr. al autres ſes condit. &c. Et vuc' priſt les profits continualment, le vic' retorne q. il & le Jury (ſes ceo trove) ſont in doubt ſi le terr. ſerra extend. & prejont diſcretion des Juſtices. Dyer 295.

Sur Elegit le vic' deliver les terrs (a. f. ſev. & ſes complt. al court, &c. auter bre. iſſit al vic' de f. ſev'. Fitz. Execution 67.

Bre. de extent ſt. agard tempore Marie, & le bre. execute per inquiſition in vie in Royne, mes dent le retorne el devy, & per le vic. retorne ceo; quere ſi le retorne ne ſont ſa. gourt. Dyer 206.

The Sheriff may return the extent for lands, and no goods. Or may return the extent for goods, and that the party had no lands. Libr. Intr. fol. 261, 262.

The Sheriff may return Mandavi ballivo libertatis, &c. ibid.

He may return quod I. S. infranom. Nulla habet bona neque catalla in balliva mea, quæ C. N. infranom. per aliquod precium deliberari facere poſſum. ibid.

Or thus (as the caſe may be) ſc. Nulla habet (or habuerit) bona neque catalla in balliva mea, tempore Judicii (unde infra fit mentio) reddit. nec poſtea: or tempore captionis inquiſitionis illius, nec tempore recuperac. pred. or Quarto die M. ulti. præter in bre. ſpecific. Quo die idem breve emanavit, nec unquam poſtea. ibid.

Sur Elegit le vic. retorne, que il ad extend le terr. le def. mes ne poet deliver ceo al plt. in tant que un auter ad ceo in extend dent, ceo ſemble bon retorne: Et vuc. le vic. puiſſoit aver ſeiſe le terr & deliver ceo (ſc. le reverce. cum acciderit) al plt. nient ob. q. fuit in extent dent (come ſemble) fuit le caſe dun Palmer in Banco Regis circa. 30. Eliz. vide Fitz. Retorn 112. hic retorn de extent.

Auxi ſi A. ſoit in debt al B. & ſon terr ſoit in execution per Elegit (ſc. le moiety del ceo) & apres le Roy, ou auter perſon ad auter execution per ſon debt, vers le dit A. icy le vic. pt. deliver al Roy, ou aut perſon, le ſecond moiety, & auxi le recover del primer moiety cum acciderit.

Note that upon an Elegit, the extent and valuation of the lands, and the praiſing of the goods, muſt be by an enqueſt (ſc. per Sacramentum xii. proborum et legalium hominum) and not by the Sheriff himſelf; although the Writ ſpeaketh of no inquiſition. Vide Co. 4. 74.

Upon an Elegit the Sheriff returned that he had delivered to the plaintiff goods and chattels of the defendants, ad valentiam xx. l. per rationabile pretium, and ſhewed what the goods were in certain; and alſo that he had delibered twenty acres of land of the defendants, quæ eſt medietas omnium terrarum, per rationabile extentum; but returned

no

no inquiſition, ſc. per Sacramentum xii. &c. and it ſeemeth by the Court there, that the extent ought to have been by inquiſition, &c. and that the Sheriff himſelf cannot extend it. Dyer 100.

Alſo upon an Elegit the Sheriff is to make execution by meets and bounds.

Upon the Elegit the Sheriff may return Nihil (Fitz. execution 52, 58. Br. Exec. 64. 72.) or he may return that he hath extended the land of the defendant, but that he cannot deliver the ſame to the plaintif, for that another had the ſame in extent before. Vide hic c. 28. & 26.

Deliberat. poſt extentam factam ſuper obligat. ſtatuti ſtapulæ.

VIrtute, &c. liberavi infranominat. B. S. maneria, terras, et tenementa infraſ. habend. ſibi et aſſig. ſuis, ut liberum tenementum ſuum quouſque ſibi de debito infraſcripto, una cum dampnis, miſis, et expenſis ſuis plenarie fuerit ſatisfact. prout, &c.

Fitz. 166. C. Upon an Elegit the Sheriff returneth, that the Conuſor hath made a feoffment of divers parcels of his lands to divers tenants, &c. and of all the reſidue that he hath infeoffed the King, the Kings lands are to be diſcharged, &c. But upon a Scire facias to warn the other tenants to come at a certain day to ſhew cauſe why their lands ſhall not be put in execution, if the Sheriff returneth them Garnie, if they ſhew not cauſe to bar the execution, their lands ſhall be extended, &c.

Bre. de eſtrepement.

Note that the Sheriff by force of this Writ may reſiſt them which are about to (or would) make waſte; and if otherwiſe he cannot ſtay or refrain them from making waſte, he may impriſon them, and may make his Warrant to others to impriſon them; And if it be needful, he may take Poſſe comitatus for his aid. Co. 5. 115.

Et ceo bre. de eſtrepement geſt in action de Weſt, cibien al aſcun tps. deus judgment, come apres judgement, & dent execution, Ces il ne poet recover damages per plus que il ad contain in ſonc ount, & il ne pt. aſſign aſcun waſt fuit apres le bre. purchaſe. Foliambes Caſe Co. pt. 5.

Retorn de Extent ſur Recog. ou Stat.

VIrtute iſtius brevis mihi directi cepi corpus infranominat. W. W. cujus quidem corpus, ad diem et locum infra content. parat. habeo, prout interius mihi præcipitur. *Extent.*

W. W. infraſcr. non eſt inventus in balliva mea. Et ulterius certifico quod ſeiſiri feci in manum Domini Regis maneriam de, &c. cum part. in inquiſitione huic brevi conſut. ſpec. prout interius mihi precipitur. Libr. Intrac. fol. 598. *Aliter.*

Reſid. execut. iſtius brevis patet in quadam (or predict.) inquiſitione huic brevi annex.

A. B. Armig' Vic.

Cantab. Inquiſitio indent. capta apud C. in com. prædict. xij. die Januarii Anno &c. coram A. B. Armig. vic. com. præd. virtute brevis domini regis mihi direct. et huic inquiſitioni annex. per ſacrament. T. B. &c. (ut ſuper:) Qui dicunt ſupra ſacrament. ſuum, quod W. W. in brevi præd. nominat. die recogn. debit. in eodem brevi ſpec. fuit ſeiſitus in dominico

ſuo ut de feodo, de & in manerio de A. in com. præd. clari annui valoris in omnibus exitibus ultra repriſ. C. l. Ac de et in manerio de C. in com. præd' clari annui valoris ultra repriſ. C. l. Et ulterius Jurat. prædict' ſuper ſacrament' ſuum prædict' dic' quod prædict. W. W. die recogn' debit' prædict' ſeu unquam poſtea, nulla habuit bona ſeu cattall', neque al' ſive plur' terr' ſive tenementa in com' prædict' ad eorum noticiam, quod extend' appreciari aut in manus dicti domini regis capi aut ſeiſiri poſſint: Quæ quidem maneria terr' & tenementa prædict' cum pertinen' ego præfat' vic' die caption' hujus inquiſitionis cepi in manus dicti dom' regis per extent' prædict. In cujus rei teſtimonium tam ego præfat' vic' quam Jurat. prædict. huic inquiſitioni ſigilla noſtra alternatim appoſuimus, die, anno et loco ſupradict. &c.

A. B. Ar' Vic.

Sur extent del ſtat. merchant le vic' retorne que le corps ne pt. ee' trove, & que il aver extend le terr. & liver al plt. Regiſt. 146. And note that if the Sheriff ſhall return that he hath extended the land, and ſhall not return further that he hath delivered the ſame to the plaintif, he ſhall be amerced.

Sur extent del ſtat. ſtaple le vic' retorne le extent del terr. & non del bies vnc' ſon. Br. tra. 438.

Le vic' pt. retorne que le def. avoit rie. jour de le recog' fuit, mes q. il ad purchaſe ters puis le tps. t'mes del ley. tit. elegit.

The Sheriff may return Non eſt inventus, nec habet bona, nec terras.

Or the Jury may finde, Nul terr. ſi non jure uxoris quæ ſupervixit. Or *que le recog. purchaſe le terr. per le recog.*

The Sheriff returned *quod nullus venit a receiver le terr.* &c. Libr. Intr. 596.

Two ſued to have execution of a ſtatute merchant; the Sheriff returned that one of the Plaintifs was dead. Fitz. execution 38. Libr. Intr. 595.

One ſued to have the body of the Conuſor of a ſtatute merchant, &c. and the Sheriff returned the Conuſor Mortuus. Fitz. execution 97. vide Dyer 299.

The Sheriff returned that he had no land but in Ame. Dee. Fitz. Ret. 109.

Aliter. Virtute, &c. domino regi in Cancellaria ſua, ad diem et locum infracontent. ubicunque tunc fuerit, certifico, quod tali die et anno ſeiſinam & poſſeſſionem de et in manneriis, terris et tenementis infraſpec' infranominat' *W. C.* liberavi ſecundum exigen' iſtius brevis; ac infranom' *H. M.* non eſt inventus in balliva mea.

Aliter. *I. M.* infraſ. non eſt inventus in balliva mea; Ideo ipſum capere non poſſum ad præſens. Sed quoad extendend' et appreciand' omn. terras et cattalla ipſius, *I. M.* juxta formam iſtius brevis, Execut. inde patet in quadam Inquiſitione huic brevi conſut. Quæ quidem terr' & catall' in dicta inquiſitione content', in manus domini regis ſeiſiri feci.

Aliter. *A. B.* infranominat. non eſt inventus in balliva mea; Et ideo virtute hujus brevis mihi direct. extendi & appreciari feci omn. terras & tenementa, bona et catalla pd. *A.* in dicta balliva mea: Quæ quidem extent. huic brevi eſt annex. ac etiam omn. terras et tent. prædict. in eadem extent. ſpecific. una cum dampnis et cuſtag. ſuis rationabilibus levavi, juxta formam ſtatuti inde editi & proviſi, & ſecundum formam hujus brevis.

Upon

Upon an extent of a ſtatute merchant, or ſtaple, the Sheriff may return that the debtor is a Clerk. hic cap. 24, 25.

Upon an extent of a ſtatute merchant if the Sheriff returneth quod breve tarde venit, or returneth that he directed it to the Bayliff of ſome franchiſe, the Sheriff ſhall be puniſhed. See hic c. 24. ſtat. de mercatoribus; tamen vide Libr. Intrac. f. 595. c. *Lonſur capias ſur ſtat. merchant, le vic. retorne*, Mandavi ballivo libertat. and alſo returned Tarde.

Quod diſtrinxit partem per frumentum, vel per alia catalla, ad quod non invenit emptores, *ſee. hon Retorne Fitz.* 133. *b.* *Aliter.*

Upon a Writ of Extendi facias, the Sheriff may return the ſpecial matter, ſc. that he cannot make execution, for that another hath thoſe lands in execution by force of an Elegit, &c. Or that another is in by diſcent, &c. for that they are not to be put out of poſſeſſion, without a Scire facias, &c. Fitz. Ret. 112. et execution 97.

Upon a Writ of execution upon a ſtatute merchant, it hath been holden a good return, that the party hath no land, but only in antient Demeſne. 15 E. 3. Fitz. Ret. 109. Tamen quere inde; for by the book of 7. H. 7. fol. 10. Lands in antient Demeſn. may be put in execution upon a ſtat. Vide hic c. 26.

Upon an Extendi facias the Sheriff returneth that the Conuſor is dead, and alſo an inquiſition of the extent of the lands of the Conuſor; but in the inquiſition no certain eſtate is returned; but generally that the Conuſor fuit ſeiſitus die Recognitionis fact. de Maner. de B. without ſhewing of what eſtate; and this return was holden to be uncertain, inſufficient and void; for that the word ſeiſitus, may be for life, or in fee-tail, in which caſes the land after the death of the Conuſor is not extendable; and therefore in caſe where the death of the Conuſor appeareth in the return, there of neceſſity his ſeiſin muſt be found to be of an eſtate of fee-ſimple only. Dyer. 299.

Upon an Extendi fac. upon a ſtatute ſtaple, the Sheriff extended the lands of the defendant, and praiſed his goods, and ſeiſed them into the Kings hands, according to the Writ, (but deliyered them not to the Conuſee, which he needeth not to do untill a liberate cometh to him; yet he ought to have returned the extent and praiſement.) And after a Writ of Prærog. came out of the Exchequer, commanding the Sheriff to levy firſt 100. l. for the King, &c. And the Sheriff returned the ſpecial matter upon the Writ out of the Exchequer, &c. Et ideo nihil inde fecit, &c. And the Sheriff was therefore amerced, and was compelled to return the extent in the Exchequer for the Kings debt. Vide Dyer 67. et hic c. 25.

Upon an Extendi fac. upon a ſtatute merchant, the Sheriff returned that he had extended the lands, but did not return that he had delivered them to the plaintiff: whereupon it was moved that the Sheriff ſhould be amerced. Fitz. Execution 38. et Fitz. Scire facias 117. et Fitz. Exec. 73.

CAP. 59.

Retorna de Exigent.

Exigent. VIrtute iſtius brevis mihi directi, ad com. meum tent. apud caſtrum Cantab. in com. Cantab. infraſcript. die Lunæ videlicet decimo die I. anno Regni domini regis infraſcript. xix. infranominat. *I.C.* & cæteri defend. infranominat. (if there be above two) primo exacti fuer. et non comparuer. nec aliquis eorum comparuit, ad com. meum ibidem tent. die Lunæ videlicet viceſimo die A. anno ſupradict. prædictus *I. C.* & cæteri defend. infranominat. ſecundo exact. fuer. et non comparuer. nec aliquis eorum comparuit, Ad com. meum ibidem tent. die Lunæ videlicet decimo die *S.* anno prædict. prædict. *I. C.* et cæteri defend. infranominat. tertio exact. fuer. & non comparuer. nec aliquis eorum comparuit, Ad com. meum ibidem tent. videlicet duodecimo die *O.* anno prædict. prædictus *I.C.* et cæteri defend. infranominat. quarto exact. fuer. & non comparuer. nec aliquis eorum comparuit, Et ad com. meum ibidem tent. die Lunæ videlicet tertio die *N.* anno prædict. prædict. *I.C.* & ceteri defend. infranominat. quinto exact. fuer. et non comparuer. nec eorum aliquis comparuit, Ideo prædict. *I. C.* & (or name them all) ceteri defend. infranominat. per Judicium *I. W.* et *W. Ri.* gen. Coron. dicti domini regis com. prædict. ſecundum legem et conſuet. regni domini noſtri regis Angliæ utlagat. ſunt et quilibet eorum utlagat. eſt.

Aliter. Virtute iſtius brevis mihi direct', ad com. meum tentum apud C. in comitatu C. infraſcripto, die Jovis vid. decimo die I. anno regni domini regis infraſcript. 19. *I. C.* infranominatus primo exactus fuit et non comparuit, Et ad com. meum, &c. (ut antea,) ſecundo exactus fuit et non comparuit, Et ad com. meum tent. &c. (ut antea) tertio exactus fuit, et non comparuit: Et ad com. meum tent, &c. (ut antea) quarto exactus fuit et non comparuit, Et ad com' meum, &c. (ut antea) quinto exactus fuit et non comparuit; Ideò prædict' *I.C.* per Judicium Coronatorum dicti domini regis comitatus predicti, ſecundum legem et conſuet. regni Angliæ, utlagatus eſt, (or if it be a woman) waiviata eſt. Vide Co. L. 122.

Upon the return of the Exigent, it muſt appear that it was per Judicium Coronatorum (for they be Judges of the utlaries) otherwiſe it is error. 21 H. 7. fol. 33.

And the Judgement is, Ideo utlagatur per Judicium Coronatorum. Co. L. 288.

So note that he which is ſued, if he do not appear upon the mean proces, then upon the Exigent he ſhall be called (by the Sheriff) at five County Court days, to anſwer to the Law, and if he come not within that time, pro ex lege tenebitur (cum principi non obediat, nec legi) et extunc utlagabitur.

And no County ought to be omitted, but when that the Proclamation beginneth, the Sheriff ought to purſue the ſame at every County after without omiſſion (aurement ſerra error) vide Plo. 371.

Mes le judgement ſa. pronounce per le Coroner in le 5. County; & donque le vic. doit fes retorne de ceo, &c.

Et ſi ſur le Exigent le vic' retorne quod non comparuit, ſur ceo retorne le plt. avera un Capias utlagatum, vers le def. &c. *Mes ſi le def. appear ſur le*

Exigent

exigent, il doit aver. ſuperſedeas, & donque le Plaintiff declarer vers luy. &c.

Et qt. le vic. ad Retorne le utlary, ove le exiget in le Court q. agard le exigent. donq; ceo eſt bon utlary attach. intents. Fitz. 116.

Alſo the Return of an Exigit ſhall be void by reaſon of incertainty, as where the Sheriff returneth the Exigit, quod ad Comit. Lancaſtr. tent. ibidem, &c. where it ſhould be, ad Comitat. Lancaſter. tent. apud Lancaſt. (or at ſome other certain place, whereto ibidem might have relation.) So the Sheriff returneth the Exigit thus. Ad Comit. tent. apred. Caſtorum de Oxon, &c. And ſets not down in what County.

So the Sheriff returneth Proclam. feci ad Com. tent. tali die, and ſhewes not what year. 27. H. 8. Br. Retor. 3.

Sur Exigit le vic. retorne, quod al. 5. Huſtings, &c. le defendant fuit demand, & ne appeirt, & ne mr. in certen, in ceo Retorne, qt. ceo. 5. Huſting. fuit tenus, ne in qt. Liew, per que le Retorne fuit adjudge d'ee male. 39 H. 6. Fitz. Retor. 29. et exigit. 11.

Un utlary ſint reverſa per Curiam, quia ſur le exigent, le vicount retor. ad Comit. meum tentum (a tiel Liew, & jour, proxime poſt Petri & Pauli *Anuo regni, &c. Infranominatus* I. S. *primo exactus fuit, & non comperuit, &c.) Et ceo perol, feſtum, fuit interleſſe.* Anno 30. Eliz. in Communi Banco.

Upon an Exigit the Sheriff returned, quod ad Comitat. tent. tali die, et ad tres Comit. proxime precedentes predictus D. def. exactus, non Comparuit, ſed Manucaptus per I. C. ad ſalvand. ei Comit. illius ne utlag. promulgareter in ipſum prout mos eſt, &c. This was diſallowed, and the Sheriff amerced. Retor. 88. 14 E. 3. fol.

An Exigent is a Writ that lyeth where the Defendant in an Action perſonal will not be found; nor hath any thing within the County whereby to be attached, or diſtreined: And it is directed to the Sheriff, to call and proclaim him in five County Court days, one after another, charging the Defendant to appear upon pain and danger to be Outlawed. Ter. de Ley.

Exigenda eſt Conditio ejus qui quinquies in Comitat. aperto exactus aut vocatus ad comparendum, non venit, Ideoq; Ex lex propter contumaciam proclamari poteſt. Dr. *Cowell* Index.

Retorn' de breve de Exigend' cum Superſed.

VIrtute, &c. ad com. meum prædict' ibidem tentum die Jovis viz. 20. die A. anno prædict' prædictus I. C. quarto exact. fuit, et comparuit, et protulit mihi breve domini regis de ſuperſed', et eſt huic brevi annex' per quod ad executionem iſtius brevis ulterius faciend. ſuperſed. omnino, prout mihi in eodem brevi de ſuperſed. præcipitur. *Aliter cum Superſed.*

But where upon the Exigent the Sheriff returneth Reddit ſe, he muſt have the body in Court at the day of the Return of the Writ, or elſe he ſhall be amerced: Except that the party be ſo ſick as he cannot, &c. Vide Lib. Intr. fol. 335. b. c.

Alſo you ſhall finde the like Return in Dyer, fol. 223. where the Sheriff returned, Quod comparuit al. 5. County & protulit Superſedeas, &c. Vide Libr. Intra. fol. 335. c. d. et 336. a b.

And yet you ſhall find that the Sheriff hath been amerced for the like Return. Libro Intrac. tito exigit. in Retor. div. 8. Where the Sheriff had made his Return. Ad Comitat. S. tent. apud G. tertio die, &c. An. &c. predictus R. C. primo exactus fuit et comparuit, et protulit mihi breve Dom. Regis, de eodem R. ulterius non moleſtand. ſive ulterius utlagan-

lagandum, quod quidem breve, dicto brevi de exigi fac. Nihil actum eſt. Cujus quidem alterius brevis tenor ſequitur in hæc verba. Henricus, &c. vic. S. ſalutem. Cum (tali die &c.) per litteras noſtras Patentes, de gra. noſtra ſpeciali, de protectione Prerogativæ noſtræ, ſuſcepimus dilectum ſervientem noſtrum R. C. unum. guar c. Cameræ, noſtræ in ſalvam gardian. protect' et defen' noſtr. &c. (reciting the ſame at large.) Tibi precipimus quod ipſum R. contra tenorem litter. noſtrar. pred. non moleſtes in aliquo ſeu graves. Teſte, &c. Et quia pred. vic. executionem dicti brevis de exigend' non fecit: Sed de executione ejuſdem pretextu predicti alterius brevis ſuperſed. Ideo idem vic. in man. & le vic. ſint amerce per les Juſtic. ad 40. s.

Alſo upon an Exigit awarded, the Sheriff returned, *que le Roy luy maunde per br. de privy Seal, que il avoit luy pardon, &c. & command que ne ſoit endamage, &c. Et iſſint il ad rien ſoit per reaſon de ceo commandement le Roy, & retorna le br. le Roy, &c. Mes le vic. fuit amerce, & novel exigent agard.* 14 E. 3. Fitz. Retor. 89. Plus hic c. 21. 29.

An Exigit is awarded upon an Inditement, and the party findeth Sureties, and hath a Superſedeas; but he delivereth that not to the Sheriff; by reaſon whereof he was Outlawed; and after he offered the Superſedeas to the Sheriff, who refuſeth the ſame; yet at the day of the return of the Exigit, if the party ſhall bring this Superſedeas into the Court, the Outlary ſhall be avoided thereby: But yet by not delivering of the Superſedeas to the Sheriff before, the party ſhall be Outlawed, his goods ſeiſed, and himſelf diſcredited. Cromp. Inſt. de p. 145. tit. Superſed.

And note that he which is ſued, if he do not appear upon the mean Proces, &c. then upon the Exigent he ſhall be ſolemnly proclaimed, demanded, or called by the Sheriff at five ſeveral Counties, ſc. from County to County, each one after another to appear, and to yield his body, and anſwer to the Law, or elſe that he ſhall be Outlawed. And if he cometh in at any of the five Counties, the Sheriff is to take and impriſon him: But if he cometh not in within that time, then the Sheriff with the aſſiſtance of one Coroner (at the leaſt) is to pronounce him Outlawed, ſc. to pronounce him to be out of the Protection of the King and his Laws, Finch 346. But the Judgement is to be given by the Coroner in the five Counties, and then the Sheriff is to return the ſame.

Retorne de Exigent ubi unus reddit ſe, & alii non comparuer'.

VIrtute, &c. Ad com. meum ibidem tentum die Jovis, viz. x. die A. anno prædict. prædict. I. C. et cæteri defend' infranominat. quinto exacti fuer', ad quem diem prædict. I. C. comparuit et ſe reddidit priſon. domini regis caſtri ſui Cantabr': cujus quidem corpus coram Juſtic. infraſcr. ad diem et locum infracontent. parat. habeo prout interius mihi præcipitur; ſed cæteri defend. infranominat. non comparuer. Ideo, &c. ut ſupra.

The Sheriff upon a Capias Utlag. may return that the party is in priſon upon a Condemnation for Debt. Libr. Intr. 336. b.

Alſo the Sheriff may return that the party yielded himſelf to the old Sheriff, who hath not delivered him, &c. Ibid.

Lan-

Languidus in priſona.

AD com. meum, &c. prædict. I. B. comparuit, & ſe reddidit priſonæ dom. regis caſtri ſui C. infra com. prædict. & in eadem priſona modo remanet languidus, variis infirmitatibus detent. Ita quod propter corporis ſui debilitat. & mortis periculum cariari non poteſt, & ea de cauſa corpus præd. I. B. coram Juſtic. infraſcript' ad diem & locum infracontent. ad preſens haber. non poſſum juxta formam hujus brevis. Vide Fitz. Retor. 94. *Ley le vic. retor. q. il aver. priſe lun, mez. q. il ne part. aver. luy la per malady, &c. ql. retor. ſt. allow.* & Libr. Intrac. fol. 335. 336.

Retorn' de Exigent ubi unus reddit ſe, alter profert Superſed. tertius mortuus eſt, &c.

VIrtute, &c. ad com. meum ibidem tent. die Jovis, viz. x. die A. anno prædict. præd. I. H. S. R. A. C. & D. P. quinto exact. fuer' & præd' S. R. ſe redd. priſonæ dom. regis caſtri ſui Ca. in com. præd. cujus corpus coram Juſticiar. infraſcript. ad diem et locum infracontent. parat. habeo, ad faciend. id quod breve pred. in ſe exigit et requirit. Et pred. D. P. comparuit et protulit mihi breve dom. regis de ſuperſed' huic brevi annex. Ideo quod eum ulterius procedere non potui: Et pred. I. H. mortuus eſt: Et pred. A. C. waviat. eſt. Ideo per judicium I. W. et W. R. Coron. dom. regis com. præd. I. H. utlag. et præd. A. C. waviat. eſt.

A. B. Armig' Vic.

And yet upon an Exigent, the Sheriff returned that the party was dead, and it was doubted whether it were a good return: Br. 125. Vide libro Intrac. fol. 336. a. b. tiel Return.

And yet by other Authorities, ſuch a Return is holden not to be good, but the Sheriff was amerced for ſuch a Return; for that the Sheriff hath no authority by the Exigent, but to call the party from County to County, to appear, and anſwer to the Law; and if he appear, then to take him and impriſon him, &c. (hic cap. 15.) *Et ſi* A. *home in tiel caſe ſoit utlage, ſon heir poet aſſigne ceo (ſc. quod mortuus fuit) per Error.* Vide Fitz. h. Retor. 104. 106. et 121.

Alſo if after two or three Counties and Proclamations (and before the Return of the Exigit) the King ſhall happen to die; And in the next Kings time the reſt of the Proclamations be made, and then the Sheriff returneth the party Quinto Exactus upon the ſame Exigit; this is erroneous; for that by the Kings death the Writ did abate; and yet the Utlary is not void, but is Error——7. H. 7. 5.

Yet Quære, whether the Sheriff muſt not return this Quinto Exactus, and that the party muſt after aſſign this for error.

Retorna de Allocat.

ALlocat. illi quatuor com. ad quos infranominat. T. C. exact. fuit et non comparuit. Et ulterius virtute iſtius brevis ad com. meum tentum apud caſtrum Cantab. in com. C. infraſcript. die Jovis, viz. Octavo die N. anno regni dom. regis infraſcript. Angliæ, &c. xix. prædict. T. quinto exact. fuit et non comparuit; Ideo per judicium coronator. &c. (ut ſupra) utlagat. eſt. Vide Fitz. Exigit. 14. Br. Exigit. 24. & Procl. 3. Plo. 371.

And

And if it be a woman, then thus: Ideo ſecundum legem & conſuetudinem, &c. prædict. A. R. waiviata eſt.

If the Exigit be returned not fully ſerved (without any fault in the Plt.) as where the Defendant after demand at two Counties, yields himſelf in Court, and getteth a Superſed. &c. If the Plaintif brings a new Exigit, before any other County holden, he ſhall have the benefit of the former Counties; and therefore it is called Allocato Comit. Finch. 349. & 116.

Alſo Outlary returned by the Sheriff upon an Infant (being above the age of fourteen years) is good. Hic cap. 36.

Retorn. de Exigent inter duos Vic'.

VIrtute iſtius brevis mihi directi ad com' meum tent' apud caſtrum Cantabr' (in com. Cantabr' infraſcript. die Jovis, viz. x. die A. anno regni domini regis Angliæ, &c. infraſc' xix. infranominat' R. K. primo exactus fuit et non comparuit: Iſtud breve ſic ſuperius indorſat' mihi deliberat' fuit, per I. C. Armig' nuper Vicecom' comitatus infraſcr. proxim' predeceſſorem meum in ejus exit. ab officio ſuo, ut ſuperius in dorſo hujus brevis. Et ad comitatum meum, &c.

Aliter. Iſtud breve prout indorſatur, mihi deliberat. fuit per A. R. Ar. nuper Vic. com. infraſc. proxim' prædeceſſor' meum in ejus exit. ab officio, Et ad com. meum tent. apud caſtrum C. prædict. in com. prædict. die Jovis viz. x. die D. anno prædict. prædictus R. K. ſecundo exact. fuit et non comparuit, &c. (ut ſupra.) Et ſi deficiunt Coron. ad com. ad reddend. judicium, tunc Vic. retorn. brevia ſua ſic, viz. Et quod ob defect. I. W. et W. R. coron. dom. regis comitat. prædict. ulterius procedere non potui. And then upon this return, the Cozoners will be fined for every Writ, unleſs they can make a good excuſe.

Pro defectu Coronator.

A. B. Miles Vic.

Aliter cum Superſedeas. Iſtud breve ſic ſuperius indorſat. una cum brevi dicti domini Regis de ſuperſed. ſibi annex. mihi liberat. fuit per A. B. nuper Vic. com. prædict. prox. prædeceſſor. meum.

Alſo the Sheriff may Return, that the Cozoners were abſent, ſc. Quod ad tale Comit. I. M. et I. G. Coronator. Dom. Regis Com. præd. ſolemniter exacti non. vener. Ideo ad execution. brevis præd. ob eorum defectum ulterius ibidem procedere non potuit.

Or he may return that no Cozoner was there but one, who refuſed to pronounce the Outlary, Libr. Intrac. fol. 334, 335. et 336.

Pro defectu Coronat. Virtute, &c. Et ad com. meum tent' ibidem iii. die N. dicto anno xx. domini regis infraſcript', pred. T. C. quinto exactus fuit, et non comparuit, et pro defectu, W. B. et R. Coronator' com. predict. ulterius inde proſequi non potui. Vide Fitz. Exigit. 14.

Pro defectu Comitat. Virtute, &c. ad com. meum, &c. Et quod non fuerunt plures comitat. in com. prædict. tent. a die receptionis hujus brevis prædict. uſq; ad diem retorn. ejuſdem, per quod nihil actum eſt ad præſens;
Vel ſic, Et ideo in executione iſtius brevis ulterius faciend. nihil actum eſt. Vide lib. Intr. fol. 335. et hic cap. 54.

Upon an Indictment before Juſtices of Peace, if the Exigent ſhall be returned, quarto exactus, and that he cannot call the party any more

more for shortnes of time, it seemeth to be a good return; And that an Exigi facias of new shall go out, without alledging the four Counties, &c. Cromp. 149. 150.

Retorna brevis de proclam. super exigit.

VIrtute istius brevis mihi directi, adcom. meum tent. apud castrum Cantabr. in com. C. infrascript' xxi. die Martii anno 19. infrascript'. primo proclam' feci. Et ad general Sessions pacis tent. apud Castrum Cantabr. præd. in Com. præd. 30. die Aprilis, An. 20. supradict. Secundo proclam. feci; Et ad maxime usuale Ostium Ecclesiæ de B. infrascript' super diem dominicum sc. x. diem Maii Anno regni domini regis infrascript. Angliæ, &c. xx. immediate post divinum servic', nulla prædicatio eadem ecclesia adtunc ibidem existens, uno mense ad minus antequam instanomin' I.S. quinto exact' fuit, Tertio proclam' feci, Quod infranominat. I.S. se reddat mihi prout interius mihi præcipitur.

W. W. Mil' Vic.

Virtute istius brevis mihi directi, ad com. meum tent' apud C. in com. C. infrascript' de Jovis xxi. die M. anno regni domini regis infrascript'. xx. primo proclamari feci. Et ad generalem sessionem pacis tent. apud C. in dicto C. (in partibus de M. infrascr.) die Jovis scilicet iii. die O. prædict. anno xx. dom. regis infrascript. Secundo proclam. feci. Et ad maxime usuale ostium, &c. (ut sup.) Tertio public proclam. feci, Quod I.C. & cæteri omnes defendentes infranomin. se reddant infrascript' vic. Ita q. idem Vic. habeat corpora eorum coram Justic. infrascript' ad diem & locum infracontent. prout istud breve in se exigit & requirit. *Aliter.*

Retor. Br. de bonis Restituendis apres Exigit.

ONe being Outlawed, sued a Writ of Error, and reversed the Outlary, and had a Writ to the Bailiff, de bonis restituendis (which were taken away from him when he was Outlawed, &c.) Here the Bailiff may not return (or plead) that he was not Bailiff; but he must answer, whether he had the goods, or no, and how they are divested out of his possession: Or else he must make deliverance thereof, if he cannot shew reasonable cause to the contrary. 6. H. 7. 9. Fitz. Retor. 36.

Un Prosser fuit utlage, & apres le utlary fuit reverse, & un br. de Restitution fuit agard al vic. pro bonis Restituendis (que fuer. al value de 100 l. *Le vic. retorne q. il aver vend les bienz. per* 40. l. *& protulit precium inde in Curiam; Mes le retorne fuit tenu insufficient, Cr. le br. de Capias utlagatum, &c. ne gart. le vic. vendition. exponere; uncer* 3. *Justices doubta, Cr. le br. est, in manus nostras Capias, Ita quod de vero valore & exitibus eorum nobis respondeas, &c. Issint semble al ex, que le vic. part vender. eux. Ou de responder le value al Roy, & reteiner les biens luy mesme, &c.* Dyer 223. *Sed vide* Co. 5. 90. b. & 8. 143. *Que si le utlary soit apres reverse, la def. avera Restitution de ses biens.* Vide hic cap. 15.

And so note that (upon the Kings Writ) the Sheriff in some Cases may seise goods (to the Kings use) and may keep them, but may not safely sell them, as here before in Case of Outlary.

In ſome caſes the Sheriff may ſeize the goods, and may and ought to ſell them; as upon a Fieri fac. See hic cap. 30.

CAP. 60.

Retorna Brevis de falſo Judicio.

Queſt. in Natur. de Accedas ad Curiam; Ou de Recordare. Fitz. 444.

Virtute iſtius brevis; aſſumptis mec. I.W. &c. Quatuor diſcret. & legal. milit. (or hominibus) de balliva mea, in propria perſona mea acceſſi ad Curiam Caroli Regis Angliæ de O. tent apud, &c. (tali die & Anno) & in plena Curia illa Recordari feci loquelam, unde infra fit mentio: Et record. illud habeo coram Juſtic. infraſpec. ad diem infracontent, que huic brevi eſt conſut. ſub ſigillo meo & ſigillis W. C. D. & E. quatuor legal. homin. (ejuſdem Comit. ex illis) qui recordo ill. interfuer. Libr. Intrac. fol. 343.

And the Sheriff muſt return the names of the four Knights of the County, & ſupra Liber Intrac.

Falſo Judicio. Virtute iſtius brevis (aſſumptis mecum, P. M. quatuor legalibus milit' de com. meo) in propria perſona mea acceſſi ad curiam E. tent apud N. (tali die & anno.) Et in partibus curiæ illius ab A. B. &c. ſectator' ejuſdem curiæ, & R. H. Seneſch' ibid', petii Recordum loquelæ q. eſt in eadem curia, per parvum breve dom. regis de Recto, inter I. P. petent' & N. S. tenent' fieri, & mihi liber. Qui quidem Seneſchallus, & Sectator' Recordum illud inde mihi liberare noluerunt, ob quod execut' dicti brevis minime facere potui. 12. H. 4. fol. 23.

This Writ lyeth where falſe Judgement is given in the County (or other Court Baron) and is to cauſe the Record to come before the Juſtices in Banco, &c. And therefore upon this Writ, the Sheriff is to repair to the Lords Court, or Hundred Court, &c. in the Writ mentioned, and is there to require of the Lord and Steward to have the ſight of the Plea (or of the Suit there depending, in the Writ alſo mentioned; And in full Court (before the Suitors) the Sheriff is to Record the ſame Plea, and then he is to return the ſame; and withall he is to warn or Return the Defendant to be before the Juſtices at the day prefixed, &c. See hic cap. 48.

Alſo upon the Writ of falſe Judgement, which is an Accedas ad curiam, the Sheriff muſt take with him four men; but it is not needfull that they be Knights, Fitz. 18. c. Fitz. 18. c.

This Writ muſt be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the ſame Court. ibid.

In this Writ, it is a good return for the Sheriff to ſay, that after the receit of the Writ, and before the return thereof, no Court was holden, ſo as he could not execute the Writ, &c. Fitz. Retor. 21. Ibid.

Alſo it is a good return (in the Writ) that the Sheriff hath required the Lord to hold his Court, and the Lord would not, ſo as he could not execute the Writ: And upon ſuch return the Juſtices will award a Diſtreſs

ſtreſs directed to the Sheriff, to Diſtrain the Lord to hold his Court. Fitz. Retor. 21. Vide Libr. Intr. fol. 342.

The Sheriff returned that he had been at the Court, and that the Suitors would not Record the Plea. Fitz. fx. Judgement 6. 8. 21. Proceſs 167. & Dyer 262.

Upon this Writ, although the Plaint or Suit be determined, yet the Sheriff is to make Execution of the Writ, ſc. he is to require the ſight of the Plea, and to Record the ſame, and to return the ſame Record together with the Writ. Vide Dyer 268.

The Sheriff returned that he came to the Court to Record the Plea, and that the Suitors ſaid that there was no ſuch Plea, &c. Fitz. fr. Judgm. 13. Nat. br. 16.

Or that the Suitors would not deliver him any Record. Fitz. Proceſs 128.

Or that the Suitors would not deliver him the Record, nor ſuffer him to have it. Fitz. Recordar. 7. Libr. & Intr. 342. 343.

Fitz. 19. c. In this Writ, if the Sheriff returneth, Quod breve adeo tarde venit, quod executionem ejuſdem facere non potuit, this is a good return: and upon ſuch return the party may have a Sicut alias directed to the Sheriff; and if the Sheriff doth not return this at the day, then ſhall the party have a Pluries directed to the ſame Sheriff, &c. Liber Intrac. fol. 345. d. *Tarde.*

Alſo in this Writ, if the Sheriff returneth that he went to the ſaid Court of, &c. and there prayed the Lord to hold his Court, that ſo he might make execution of this Writ, and that the Lord refuſed to hold his Court, &c. by reaſon whereof he could not do execution of this Writ, then a Diſtreſs ſhall be directed to the Sheriff out of the Court of Common Pleas, commanding him to diſtrain the Lord to hold his Court at a certain day to be limited him by the Sheriff; and that the Sheriff taking with him four diſcreet Knights, &c. of the County, &c. ſhall come to the ſame Court, &c. and that he return the ſame ſuch a day, &c. and
Vi. Fitz. 19. c. alſo that he have then and there the ſaid Record, &c. and that he Summon the aforeſaid Lord that he be there to hear the ſame Record, &c.

Upon a Writ of falſe Judgement (of a Judgement given in the Court at Godmanchester, which is a parcel of the Dutchy of Lancaſter) the Sheriff came thither to the Court; but the Suitors there refuſed to make a Record, but would thereof deliberate, &c. And in the mean time an Injunction was ſued out of the Dutchy, directed to the Plaintiff, his Counſellors and Attorneys, and alſo to the Sheriff, to ſurceaſe to purſue, or make Execution, or Return of the Writ, Sub pœna 200. l. And yet the Sheriff (notwithſtanding) returned the Writ, ut ſupra; and in his Return he named (by their proper names) all the Suitors which refuſed to make the Record (who where ſeven in number.) And upon this Return a Diſtring. Sectator. iſſued out againſt thoſe ſeven only, &c. And thoſe Suitors were amerced by the Juſtices, &c. Dyer. 262. 263.

Alſo upon a Writ of falſe Judgement, directed to the Sheriff of, &c. the Sheriff returned, that the Steward, the Bayliff, and four Suitors (naming all their names) were preſent in the Court when the Sheriff came to return the Plea, and required the ſight or view thereof, and that the Steward and the Bayliff denyed him, &c. (Omitting the Suitors:) *Et ſur ceo un Diſtreſs fuit agard al vic. tantum*

vers les. 4. Suitors, ove un Summons vers le party, &c. Et apres le br. fuit retorne ſervie, Et le Record. part ejus per les 4. Suitors tantum, al Com. Place, & enter, ſed Nihil amplius actum erat. Dyer. 268.

Nota que le br. de faux Judgement ſerra re. fa. lo. que fuit in eadem Curia, & ney. que eſt in ead. Cur. C. loquela eſt determin. ſur le Judgment. Dyer. ibid.

Sur Brev. de fx. Judgment, ſur fx. Judgement, &c. done in Court, le vic. doit recorder ceo, & a'aver. in Banco. Finch. 117.

Et nota q. ceſt br. de fx. Judgement extend auxi bien as brief. du Droit qx. ſont pleadables in County, on in Court Baron; Com. la on le parol eſt en County on in Court Baron, ſans brief. N. br. 16.

Auxi ceo br. gift, l'on faux judgement eſt done per le vic. in ſon Count. ſur un Juſtic. direct a luy a tener plea. ibid.

Mes per fx. Judgement done in le County Court, Vide le Returne de ceo. br. Hic tit. Recordare, &c. cap. 72.

CAP. 61.

Retorn. de fieri feci ſur fieri fac'.

Fieri fac. VIrtute iſtius brevis mihi directi, fieri feci de bonis & catallis infranominat. I.H. quandem dimiſſionem & conceſſionem eidem, I.H. per quandam T.G. gen. per Indentur' ſuam fact'. Vide hic antea, cap. 28. that this recital is nædleſs, (pro termino xxxi. annor. incipiend' à primo die Julii anno, &c. infraſcript' prout per Indenturam illam geren' dat' eiſdem die & anno plenius liquet & apparet) de & in uno meſſuagio ſive firma cum pertinentiis ſcituat' jacen' & exiſtent' in L. in parochia de F. infra ballivam meam, vocat' ſive cog' per nomen de B. ſimul cum omnibus & ſingulis terr' pratis, paſcuis, boſcis, ſubboſcis, aquis & paſturis, cum omnibus ſuis pertinentiis, ſcituat' jacen' & exiſten' infra villam, parochiam & Campos de F. pred. & O. ſcilicet in balliva mea. Et pred. dimiſſionem, ac omne & totum jus ſtat' titulum termin' annor' poſſeſſionem & demand. quæ pred. I. H. modo habet, de & in prædict. præmiſſis, virtute ſive vigore ejuſdem dimiſſionis & conceſſionis, aut aliter, vendition' expoſui & vendidi cuidam P.H. gen' pro ſum' lxxvi.l. xiii.s. iiii.d. Ac etiam fieri feci de aliis bonis & catallis prædict' I. H. ad valent. lxv.l. vi s. viii.d. quas quidem denariorum ſummas, ſic in forma pred. per me levat', in toto ſc. attingunt ad ſummam cxxxii. l. xii.d. Et eaſdem ſummas coram domino rege ad diem & locum infracontent' parat' habeo ad reddend. infranom'. E. P. & I. uxori ejus in parte ſatisfact' dampnorum infraſcript. prout per breve iſtud interius mihi præcipitur. Et q. prædict. I.H. nulla alia ſive plura bona aut catal. in balliva mea habuit, unde reſid. prædict. debit. clxv.l. vi.s. ii. d. fieri ſive poſſum ſecundum exigent' hujus brevis.

A. B. Ar' Vic.

Aliter. Virtute iſtius brevis mihi directi fieri feci infraſcript. x.l. de bonis & catallis infraſcript. R.W. Quas quidem x. l. coram Juſtic. infraſcript. ad diem & locum infracontent. parat. habeo, prout iſtud breve in ſe exigit et requirit.

Virtute

Virtute iſtius brevis mihi directi de bonis & catallis infranom. T. E. fieri feci debitum & dampna infraſcript. et denarios illos habeo coram Domino rege infraſcript. ad diem & locum infracont. prout interius mihi precipitur. *Aliter.*

Virtute,&c. fieri feci C. s.de bon. & catall. infranominat. W. H. quos quidem C.s.coram Juſtic. infraſcript. ad diem & locũ infracõcent. parat. habeo. prout, &c. Et ulterius eiſdẽ Juſtic. certifico q. executor. infraſcript. bona & catalla infranominat. W. H. teſtat. penit. devaſtaver. ſic q. ſummã x. marcarum infraſcript. nec aliquam inde parcellam fieri facere non poſſũ ad præſens. *Aliter ſur devaſt.*

In an action of debt againſt executors who pleaded that they had fully adminiſtred, it was found by the Jury, that they had aſſets remaining, whereupon a fieri fac. was awarded to the Sheriff, &c. And the Sheriff thereupon returned, quod mandavit ballivo libertatis, &c. Qui mihi dedit reſponſum; quod executores non habent aliqua bona teſtatoris, which return being contrary to the verdict of the Jury, was holden not to be good, and the Sheriff was therefore amerced; for he ſhould or might have returned quod Elongaver. or Devaſtaver. 5. H. 7. fol. 27. Fitz. Ret. 35.

So if the executors have waſted the goods of the Teſtator, or have imployed the ſame to their own uſe, the Sheriff upon the fieri fac. may return a Devaſtaverunt.

But if the executors have ſold the goods of the teſtator, and taken money (or other goods) for the ſame, the Sheriff upon the fieri fac. is to take other goods of the executors, to the value of the goods ſo ſold. 14. H. 4. Fitz. Ret. 55.

If all the executors, ſave one, have nothing of the teſtators, yet upon the fieri fac. the Sheriff is to make execution of that which is in the hands of that one executor. ibid.

The Sheriff returned that the executors Non habent aliqua bona teſtatoris in balliva ſua adminiſtr. poſt receptionem brevis. Fitz. Exec. 9.

The Sheriff returned that the executors had no goods of the defend. Fitz. Execut. 73.

But if the Sheriff (upon a fieri fac. againſt executors) returneth that the executors had ſold the goods; or that all the executors but one, had nothing: theſe are no good returns: Sæ hic c. 36.

Upon a fieri fac. for damages recovered, the Sheriff returned that after the recovery, and before that this Writ came to him, the defendant (in the original) by Covin had given all his goods to divers perſons unknown, to the intent to defraud the plaintiff of his recovery, this return was holden not to be good, and the Sheriff was amerced for the ſame, for that the Sheriff is to take knowledge what things he may do by the law; and this gift or alienation of the goods being void, the Sheriff ought to have made execution thereof; notwithſtanding ſuch gift or alienation. 3. H. 6. Fitz. Ret. 5.

Where there be divers of one Name.

Juſtic. infraſcr. certifico quod ſunt diverſæ perſonæ in Comitat. meo Nom. & cognominis de I. S. viz. I. S. de B. I. S. de C. & I. S. de W. & quod non continetur in iſto brevi de cujus predictor. I. S. bonis & catallis denar. infraſpec. fieri facere. Ideo ad executionem iſtius brevis procedere non potui.

Virtute,&c. fieri feci de bonis & catall. terr. & tenementis infranominat. R. B. ad valenc. CC. l. & illa de die in diem vendition. expoſui, & inde vendidi *Aliter.*

vendidi ad valenc. C. l. Quas quidem centum libr. ad diem & locum infracontent. parat. habeo, ad reddend. infranominat. I. W. prout interius mihi præcipitur, & resid. bonorum & catalorum pred. adhuc penes me remanent. invendit. ob defect. emptorum.

A. B. Armig. Vic.

Virtute istius brevis, cepi bona & catalla A. W. infraspec. ad valenc. omnium denariorum infrascript. Et illa venditioni exposui, ad quod nondum inveni emptores, Et Ideo denarios infraspecificat. habere non possum ad diem & locum infracontent. prout mihi precipitur.

Vide Dyer 98. *Sur Fieri fac. le vic. retorne, quod cepit bona & Catalla def. al value del part del debt, & quod rem. in Custodia sua pro defectu emptorum; Et comt. fuit object. que le execution ne fuit servie, ne les property del bie. altred nient ob. le seisure, vue. sur ceo retorne, un bre. de venditioni exponas fuit agard.*

Sur Fieri fac. le vic. retorne q. il avoit mande al bayley del franch. &c. *que luy respond. quod cepit bona,* &c. ad quod non invenit emptores. Fitz. execution 101.

Aliter. Virtute, &c. cepi bona & catall' infrascript' *A. W.* ad valentiam 4. l. de infrascript' Octo libris, quæ bona & catalla penes me remanent invendita pro defectu emptorum, quodque prædict' *A. W.* nulla alia neque plura bona seu catalla, nec aliqua terr' seu tenement' habet in balliva mea unde residuum prædict' octo librar', seu aliquam in de parcellam, ad presens fieri facere possum.

Aliter. Adhuc illa bona & catalla, quæ nuper de bonis & catall', firmat. occupat. & tenement. manerii de W. ad valentiam, x. l. in manus domini regis cepi, pro defectu emptorum remanent invendita. Sed de die in diem venditioni expon. & de denariis inde provenient. quam citius potero, vobis respondebo.

Aliter. Virtute, &c. vendidi bona & catalla infrascripta per me prius capta; Ac etiam fieri feci de bonis & catallis *R. S.* infranominati residuum debiti infracontenti, Ita quod omnes denarios illos paratos habeo coram domino rege ad diem & locum infracontent. infranominat. *H. W.* solvend. prout interius mihi præcipitur.

Superſed. Quod fieri faciend. denarios infrascript. virtute cujusdam brevis domini regis de supersed. mihi directi omnino supersed. quod quidem breve de supersed. huic brevi annex. vobis mitto; Et ulterius certifico, q. dictus, *I. C.* non aliqua alia vel plura bona seu catalla, terras seu tenementa in eadem balliva mea habet, unde denarii aliqui ad præsens levari possunt, &c. Vide Dyer 9.

Upon a fieri fac. for the debt, and a Capias ad satisfac. for the damages, the Sheriff returned, quod nulla habent bona neq; catalla in balliva mea, unde infrascript. 15. l. (ou debit. & dampna) aut aliquam inde parcell. fieri facere possum, Nec sunt invent. in eadem. Vide Libro Intrac. tit. Error in exception, div. 1.

Upon a fieri fac. the Sheriff returneth quod nihil habet, this is not good, without saying further, nec habuit post receptionem brevis. 39. H. 6. Fitz. Ret. 30.

Aliter

Aliter ſur nihil habet.

Nihil. INſranominatus *R. B.* miles nulla habet bona ſeu catalla, terr. aut tenementa in balliva mea unde denar. infraſpec. fieri facere poſſum, prout interius mihi præcipitur. *Aliter.*

A. B. Armig. Vic.

Infranom. *R. B.* nulla habet bona, &c. de quibus denarios infraſpec. aut aliquam inde parcellam poſſum levare, prout interius mihi precipitur.

Infranom. *R. B.* Nihil habet in balliva mea, unde debitum & dampna infraſcript. aut aliquam inde denarium fieri facere poſſum, ſecundum exigent. hujus brevis.

Note that upon a fieri fac. if it be duly executed, and the Plaintiff ſatisfied, then the Sheriff needeth not to return the Writ. Sée hic c. 38.

Alſo upon a fieri fac. the Sheriff may ſell a Leaſe for years, and yet never make any mention thereof in his return, but to return generally, Quod fieri fecit de bonis & catallis, &c. Co. 4. 74. b.

Upon a fieri fac. againſt I. S. who dyeth (before execution) the Sheriff may levy the execution of the executors or adminiſtrators. I. I. S. Dyer 76.

Aliter.

A. M. Infraſcriptus nulla habet bona ſeu catalla infra ballivam meam de quibus executionem iſtius brevis facere poſſum, prout, &c. nec aliqua terr. ſeu tenementa habuit infra eandem quinto die I. nec unquam poſtea, prout pater in quadam ſcedula huic brevi conſut.

And yet where there is found Aſſets by a Jury, There, upon a fieri fac. directed to the Sheriff, he cannot return a nihil habet, &c. contrary to the verdict of the Jury: Sée hic fol. preced.

Alſo if the Sheriff, upon a fieri fac. ſhall return, quod non habet aliqua bona in balliva ſua, &c. prout ei aliquo modo conſtare poterit, this is not good; But he muſt return directly quod nihil habet, or non habet aliqua bona in balliva ſua. 9. H. 6. Fitz. Ret. 9. Br. Ret.

Reſtitutio ſur fieri fac.

I. *G.* & alij infranominat. nihil habent, nec eorum aliquis nihil habet in balliva mea; unde reſtitutio bonorum & catal. infraſcript. infranominat. *W. M.* habere facere potui; Nec non 24. l. infraſcript. eidem *W. M.* fieri facere potui prout, &c.

Retorne de Formedon.

Plegii de proſequendo { *J. D.* / *R. R.* }

Summonitores { *J. H.* / *T. S.* }

A. B. Armig. Vic.

Sur un formed. le vic. poet retorne tarde, &c. Mes donque ſi le demand ſua un Alias ſummons, la doient eſtre 9. retorne per enter le teſte, & le retorne de ceo. Dyer 252.

In

Formedon. In a Formedon, the Sheriff returneth, quod nihil habet, &c. nec eſt inventus, &c. this is no good return; for in this Writ the Sheriff may ſummon him in (or upon) the land demanded, whether he be tenant thereof or no. Br. 67.

Forreſt.

Quant le Roy voile faire un Forreſt, un bre. iſſer. al. vic. de meſne le County ou le Forreſt ſerra, de enquirer ql. lieu eſt neceſſary de faire Forreſt; Et ſur ceole vic. prender enqueſt, & enquirer del content de lieu, & del bounds, & meſne le bounds mitter a incertainty; & tot. cel il doit retorne in le Chancery. Et quant le Roy eſt de cel aſcertained per tiel matter de record, le Roy maunder al vic. per ſes Letters Pattents, que ſerra Proclamation que le lieu que il ad retorne ſerra en apres un Forreſt. Cromp. author. des Courts 146.

CAP. 62.

Retorne in Garranty des Chres.

In a Writ *de Garranty des Chres*, Nihil is a good return. 10. H. 6. f. 12. Fitz. Ret. 12. Proces 26.

Nota q. le Proces in ceo bre. eſt ſummons, Attachment, & Diſtreſs infinite tanque le party veigne. N. bre. 156. Et ſur cheſcun de eux le vic. pt. retorne come deut. q. tres ſa. liable in ce. bre. Vide Co. L. 102.

Retorne in brief de Gard.

Here the defendant is to be ſummoned. Fitz. Procla. 5.

In this Writ, Nihil may alſo be returned (upon the defendants) Br. Ret. 101. Fitz. Proces 26. 47. Procla. 5.

The Sheriff may return that the Euſt is in another County. Fitz. Proces 164.

The Sheriff returned that he could not make Proclamation, for that the Writ came ſo late. Fitz. Procla. 1.

Upon the Diſtreſs with Proclamation the Sheriff returned that as to the Diſtreſs Mandavit ballivo libertatis; and as to the Proclamation that he made it himſelf; this is not good. Vide 21. H. 7. 14. Mes Fitz. Ret. 41. contra.

Retorne de Diſtreſs, & del Proclam. in ber. de droit de Gard.

Quod præd. def. diſtrict ſunt per catalla ad valenc. 2. s. Et manucapt. per I. M. & R. F. Et ulterius quod in pleno Comitatu ſuo tent. apud C. (tali die & Anno) Et ſic ad duos Comitat. C. tunc proxime precedent. apud caſtrum C. pred. tent. Proclamari fecit, Quod pred. def. eſſent coram Juſtic. &c. ad reſpondend. prout breve illud exigit & requirit. Libr. Intr. fol. 388. b.

Returne

Retorne de Grand Cape.

Ceo Grand Cape iſſer qr. aſcun action real eſt port, & le tenent ne appear, mes fait default al primer ſummons: Et per cel default le tenant, perdere le ter. &c.' mes del ley. Vide Fitz. 86. et old Nat. 177. bre. 177.

Virtute iſtius brevis x. die M. anno infraſcript. per viſum *R.H.* et *T.H.* proborum et legalium hominum de com. meo, cepi in manus domini regis, terras infraſcript. prout interius mihi præcipitur. *Grand Cape.*

Summon. *I.D.R.F.*

Infra libertatem. And if this Writ be directed to the Sheriff, and the place where it ought to be executed be within a Franchiſe, which hath full return of all Writs, then it muſt be thus.

Executio iſtius brevis patet in quadam ſcedula huic brevi annex.

Ego *A. B.* Vicecom. com. Cantab. mandavi *I.W.* ballivo libertatis de R. in com. prædict. qui habet plenum retorn. omnium brevium, et executionem eorundem infra libertatem prædict. in com. prædict. Et ad quem execut. iſtius brevis totaliter pertinet faciend. pro eo quo dicta executio inde alibi in balliva mea extra dictam libertatē fieri non potuit, qui mihi ſic reſpondet, &c. *Schedula.*

Virtute, &c. cepi in manus domini regis per viſum *R.H.* et *T.H.* probor. et legalium homin. de com. meo, de terris et tenemen. *I.M.* infranominat. ad valenc.* unius Meſſuagij, &c. ut in brevi infracontent.) tali die et anno) juxta formam hujus brevis (vel, prout interius mihi præcipitur, vel prout iſtud breve in ſe exigit et requirit) *Aliter.*

vel * Tertiam partem meſſuagiorū, gardinorum, et cæterorum præmiſſorum, prout interius mihi præcipitur. *Aliter.*

Virtute iſtius brevis cepi in manus Domini Regis tali die et Anno, &c. Omn. terras et tenementa, redditus et ſervic. cum pertin. ſuis, in breve iſto ſpecificat. ſecundum formam hujus brevis, per viſum *J.W.R.B.* et *F.C.* proborum et legalium hominum de balliva mea, prout interius mihi precipitur. *Aliter.*

Note that in this Writ de grand Cape, the Sheriff hath two things in command, ſc. *de prender le terr. in mains le Roy, & de Summoner le tenant.* Fitz. Amerc. 1. And yet by ſome upon theſe words Cape in manum noſtram, are but form and void, and the Sheriff ought not to ſeiſe the lands into the Kings hands by force thereof. Kiel. 117. tamen vide hic c. 11. contra ſc. *q. le vic. ſeiſin. le ter, & ſerra accomptable per les iſſues del dit terr, vel tps. del default tanq. judgment per le demandt. & q. le Roy avera later icy al ſon uſe demeſne,* vide Stamf. prerog. 84. et Finch. 86. b. accorde.

Upon the Grand Cape, the Sheriff muſt ſummon the tenant, to anſwer to his default, and further to anſwer to the demand.

Alſo the Sheriff ought to return the names of the ſummoners and pledges. Br. Ret. 86. N. bre. 178.

Upon this Writ the Sheriff returneth that the party hath nothing, per quod ſummoneri poteſt; this is a good return. Fitz. Ret. 10. Br. Ret. 7. *Nihil.*

Upon this Writ, the Sheriff returneth quod nullus venit ex parte quer. ad oſtendend. mihi terr. Et ideo non potui terr. Capere, &c. Quere whether this be a good return: But if the ſame Sheriff made the ſummons before, then he cannot after make this return. 12. H. 4. et 13. H. 4. Fitz. Ret. 54. et 103.

Upon this Writ the Sheriff may return that there is no ſuch town, &c. Fitz. Sav. deft. 73.

Now this cape in manus ſæmeth only upon the default of the tenant.

Note that the Grande Cape muſt be ſerved (ſc. the lands muſt be ſeiſed into the Kings hands) fiftéen dayes before the day of the return, ſc. before the primo die, &c. Br. Grand cape 29.

Upon the Grand Cape, the Sheriff muſt return the ſummoners, and peyors, Kitch. Ret. 44.

The Sheriff may return Mandavi ballivo libertatis, &c. Libr. Intr. fol. 399. b.

He may return virtute, &c. 3. die et Anno, &c. Cepi in manum Domini Regis duos ſolidat. reddit. infraſcript. per viſum R. et J. legalium hominum com. pred. prout interius mihi precipitur. Ibid.

Sur grand cape le tent. purra ſaver ſon default, per adire que il ne fait ſummon ſelonque le ley; Ou q. il fuit en priſon; ou diſturbe per certein de ewe, &c. Finch. 86.

Sur le grand cape retorne Nihil, &c. *ſ. q. il pred. le terr. per. ſ. deſt.* Fitz. 113.

Le grand cape iſſer (in Reall Precipees; lon un freehold eſt d' ee. recover) ſes default a le ſummons retorne, et dent apparance.

Le Petit Cape iſſer (in Precipe lon franks. eſt d' ee. recover) ſes default apres apparance. Fitz. 87. old Na. bre. 178.

Le grand cape, & Petite cape, ſee. en tots choſes d' ee. de m. natur, ſave q. en petite cape le tent e. de reſponder al ſ. default tantum, lou en grand cape il e. de reſponder al demand auxi. Fitz. 438.

Mes le petite cape iſſera, lou in plea de terr. le tenant eſt ſummon, & appear, & apres il ſt. default al auter jour done (ſc. *apres plea, iſſue, ou demurer*) Fitz. 87. Old Na. bre. 178.

Sic nota q. il grand cape iſſera ſur default dent apparance: Et le Petite cape iſſera ſes deft. apres apparance. N. bre. 178.

CAP. 63.

Retorn' del Habeas Corpus, & corpus cum cauſa: ſee hic antea, corpus cum cauſa. cap. 55.

Habeas Corpus. VIrtute iſtius brevis vobis certifico, quod ante adventum iſtius brevis, virtute alterius brevis mihi prius directi, A. B. infraſcriptus in priſona Caſtri domini regis de Cantabr. extit', ac ibidem languidus et infirmus jacebat, et in eadem priſona adhuc languidus et infirmus jacet, ita quod ipſum ob mortis metum cariare non poſſum; ideo corpus dicti A. B. ad diem infracontent' habere non poſſum, &c. Libr. Intrac. 190. c.

Languidus.

Aliter. Languidus. Juſtic' domini regis certifico, quod infranominat. I. B. adeo languidus in priſona domini regis Caſtri ſui Cantabr. in comit. C. variis infirmitat. detent. ita quod propter corporis ſui debilitat. et mortis periculum, ipſum tute removere non poſſum. Ideo corpus ejus coram Juſtic. infraſcript. ad diem et locum infracontent. ad præſens habere non poſſum, juxta formam hujus brevis. Vide Libr. Intrac. fol. 400. d.

A. B. Armig. Vic.

Habeas corpus eſt pro home endite de treſpaſs dent Juſtices de peace (ou in aſcun court d' aſcun Franchiſe) & impriſon, de remover luy in Banke le Roy. Fitz. 250. h.

Corpus

Corpus cum cauſa eſt per home condemn in aſcun court par debt & ſ. corps miſe in execution, de remover luy, ſc. ſ. corps, & le record. Fitz. 251. e.

No Writ of Habeas Corpus ſhall be granted to remove any priſoner out of any Gaol, except the ſame Writ be ſigned with the proper hand of the chief Juſtice, or (in his abſence) of one of the Juſtices of the Court, out of which the ſame Writ ſhall be awarded. 1. et 2. Ph. et Ma. cap. 14.

Upon a Habeas Corpus, or Corpus cum Cauſa, it is a good return, that the party is dead. Br. Ret. 125.

Domino regi certifico, quod I.S. infraſcr. non detent. exiſtit in priſona ſub cuſtodiâ mea; Nec fuit die receptionis hujus brevis, Nec aliqua cauſa detentionis ipſius I. penes me reſidet; Et ideo corpus ipſius I. et cauſam detenc. illius coram Domino Rege ad diem et locum infracontent. habere non poſſum, prout interius mihi precipitur. Libr. Intrac. fol. 472. d.

In theſe Writs there be divers other manner of returns, and divers of them are in manner following.

VIrtute iſtius brevis vobis certifico, quod ante adventum iſtius brevis W. B. infraſcript. captus fuit in alio loco, et priſon. domini regis de N. commiſſus, virtute cujuſdam alterius brevis mihi prius directi, cujus tranſcriptum vobis mitto huic brevi conſut': Attamen corpus ipſius W. coram vobis prompt' habeo ad diem et locum infracontent', prout mihi interius præcipitur, &c. *Aliter In priſona.*

Nos vic' præd. vobis ſignificamus, quod ante adventum iſtius brevis domini regis nobis directi, et huic brevi conſut', I. F. de T. in dicto brevi nominat' captus fuit in tali loco, et priſonæ domini regis de C. commiſſus, pro xx. l. de dampnis T. C. de N. in placito trns. in cur' domini regis in dicta civitate C. coram nobis dict. vic' tent' adjucat'. Et ſimiliter idem Jo. detentus eſt in priſona præd. ad ſectam W. S. in placito trns. coram nobis dict. vic' in cur' præd. habita et proſecut': Attamen corpus &c. (ut in prox' returna ante, &c.) *For Treſpaſs.*

Virtute iſtius brevis vobis ſignifico, quod ante advent' ejuſd' brevis domini regis R. A. in dicto brevi nominat. capt. fuit in L. & priſonæ domini regis de C. pro ſuſpectione communis latronis commiſſ. Et ulterius idem R. detentus fuit in eadem priſona, pro eo quod ipſe pro diverſis feloniis per ipſum factis et perpet. apud D. in hundred' de A. indictatus eſt, ut informatus ſum; Et alia vice captus armatus apud I. in com. (tali) duct. fuit priſonæ domini regis, dictuſq; A. eandem priſonam domini regis felonicè fregit et ab ea receſſit ut dicitur, Attamen corpus ipſius R. (ut ſupra, &c.) *For Felony*

Virtute, &c. vobis certifico quod ante adventū ejuſdē brevis A. W. infranomin. per cenſuram eccleſiaſticam, in eccleſia de N. (tali die & anno, &c.) propter ſuam contumac. (vel ſimilia) excommunicatus exiſtit, ipſeq; A. per ordinarios ſancti Martini Eccleſiæ inſtitut' in præmiſſ. adhuc reſtat in eadem cur' excommunicatus; Et hæc eſt cauſa captionis et detentionis pred' A. attamen corpus ipſius A. W. coram domino rege ad diem et locū infracontent. ubicunq; fuerit, habeo parat. prout, &c. *Excom.*

Ante advent' iſtius brevis C. D. infraſcript. fuit in tali loco et priſon. dom' regis de R. commiſſ. pro ſuſpectione contrafaction' monetæ regis, et ea de cauſa, et non alia, in eadem priſona detentus eſt. Attamen ipſum C. D. coram vobis, ad diem et locum infracontent. prompt. habeo, prout mihi interius præcipit'. *Counterfeit. monetæ.*

A. B. captus fuit apud D. in com. E. per H. S. ſeneſchallum T. F. et cor' præfat. ſeneſchall' Hundred' tent. &c. indictatus fuit pro morte I. T. per *Murder.*

prædict' B. occisi, et per præf. seneschall' missus fuit prisonæ domini regis de R. quod quidem indictament' reman. præf. seneschall. attamen corpus ipsius B. coram dom. rege in Cancell' sua ad diem in brevi isto content. ubicunque fuer', &c. habeo parat. prout istud breve in se exigit et requirit, &c.

Sequuntur hic diversæ causæ super return' hujus brevis de corpus cum causa inferend' &c.

Si necesse fuerit causa captionis, et detention' A. B. de D. infrascript. hic subsequitur.

Felonie. A de B. captus est pro suspitione latrocinii, et quia non potest invenire sufficient. secur' ad legē domini regis expectand. prisonæ domini regis de B. commiss. fuit, et in eadem causa præmiss. detinetur: Attamen corpus dicti A. coram vobis, &c.

Account. W. D. infrascriptus captus fuit ante adventum istius brevis (in tali loco) et in prisona domini regis ibidem sub mea custod' detent' prætextu cujusdam querelæ in curia domini regis ibid. coram me præf. vic. super ipsum per nomen W. &c. ad sectā (talis) in placito compot. affirmat. unde in eadem cur. coram me dict. vic. partes præd. placita ver. & posuer. se super Jurat. patriæ in eadem cur. Et postea dictus W. de D. pro suffic. manucap. ad respond. præfat. (tali) de placito præd. dimiss. fuit ad largum à prisona prædict. Et quia dictus W. post manucapt. prædict. ad judicium non reven. custod. corpus ejus ad diem et locum infracontent. habere non possum.

Aliter. Ante adventū istius brevis A. H. et S. Auditores compotorū W. de B. mihi per indent. deliberaver. corpus R. S. infrascript. salvo et secure custodiend. quousq; satisfec. W. de B. de 200. l. arrer. super fin. compot. R. S. per dictos Auditores invent. &c. Et hæc est causa captionis et detention. ipsius R. S. Attamen corpus, &c.

Treason. Infrascr. I. C. appellatus fuit apud C. coram (tali Judice) per W. probatorē (tali die et anno) pro diversis proditionibus per ipsum perpetratis, et ex illa causa captus fuit in C. et commissus prison. dom. regis de N. Attamen corpus, &c. ad diem et locum infracontent. prompt. habeo, prout interius mihi precipitur, &c.

Utlag'. A. filius A. de B. per nomen A. de B. ante adventum istius brevis utlagatus fuit de felon. coram P. S. R. T. et soc. suis Justic. domini regis ad pacem in tali libertat. vel in com. conservand. Et postea per preceptū dictorum Justic. mihi modo direct' idem A. capt' fuit apud D. et causa preposita commissus prisonæ domini regis de C. attamen, &c.

Supplicavit. Virtute istius brevis vobis certifico, quod A. W. infrascript. capt. fuit virtute cujusdam alter. brevis domini regis vocat. supplicavit ad sectam D. P. diu ante adventum istius brevis, et commissus prisonæ domini regis de C. pro eo quod non potuit suffic. invenire securitatem de pace gerend. erga dict. D. et hac de causa et non alia, in dict. prisona detinet. attamen, &c.

Aliter

Aliter poteſt dici quod condempnat. in tali curia, ex cognit' ſua propria, vel per taxationem ſuam per conſ. curiæ. *Regula.*

Ante adventum iſtius brevis, virtute cujuſdam alterius brevis voc' Cap. utlag. mihi directi, cujus tranſcr. vobis mitto præſentibus annex': Cepi C.D. infranom. ipſumq; priſon. dom. regis de C. commiſi, & adhuc in eadem detinetur priſon. cauſa premiſſ. attamen corpus, &c. Libr. Intrac. fol. 457. d. *Cap. utlag.*

Ante adventum iſtius brevis, A.H. et S. auditores Compotorum W.B. mihi per Indentur. deliber. Corpus R. S. infraſcript. ſalvo et ſecure cuſtodiend. quousq; ſatisfec. prefato W. B. de 200. l. arrerag. ſuper fine Compoti. R.S. per dictos Auditores invent. &c. Et hæc eſt cauſa captionis et detentioniis ipſius R.S. Attamen corpus, &c. *Accompt.*

Other ſpecial Returns upon a Habeas Corpus.

EGo A. B. armig' vic' com. Cant. domini regis ad diem et locum in brevi huic ſcedul' annex' content' certifico, q. ante adventum ejuſdem brevis *A.O.* in dict. brevi nominat' capt' fuit infra com' prædict. per W. V. armig. nuper vic' comit' prædict. et in priſon. dicti domini Regis Caſtri ſui Cantabr. in comitat. pred. ſalvo cuſtod. ejuſdem nuper vicec' detent', virtute cujuſdam brevis dicti domini regis de capiend. verſus dict. A. gen. teſte apud Weſtmonaſterium nono die Octob. anno regni, &c. retorn. coram Juſtic' dicti domini regis apud Weſtmonaſterium à die ſancti Martini in 15. dies tunc proxim. ſequen. ad ſatisfaciend. T.D. gener', tàm de quodam debit' de 40. l. quam de 30. s. pro dampnis, unde idem, A. coram præfat. Juſtic' apud Weſtm. convictus fuit; cujus quidem corpus, ſic capt. et in priſona præd. ſub cuſtod. dicti nuper vicecom. ea occaſione exiſtent' detent', ego præf. A.B. nunc vicecom. com. præd. recepi de præd. nuper vic' in ejus exitu ab officio ſuo, et corpus ejus per me de præf. nuper vic' ſic recept. in priſona præd. ſalvo cuſtod. feci, quousq; poſtea, ſcilicet decimo die Decemb. anno, &c. recepi quoddam breve dicti domini regi, de Superſed. mihi directi, cujus quidem brevis tenor ſequitur in hæc verba *Fac.* &c. Virtute cujus quidem brevis de Superſed' pro eo qnod non fuit aliqua alia cauſa detentionis pred. A. dict. A. ad largum ire permiſi, dict. breve de capiend. ad ſatisfac' in aliquo non obſtante, prout per dict. breve de Superſed. mihi inde precipitur. Ideo corpus pred. A. coram pref. domino rege ad diem et locum in dicto brevi huic ſcedul' annex. content', parat. habere non poſſum, prout idem breve in ſe exigit et requirit. *Captus à ſatisfac.* *Superſed.*

A.B. Armig. vic.

Ego A.B. armig. vic. com. Cant. dom. regi certifico quod corpus infranom. R.T. jacet ſub ſalvo cuſtod. mea in executione ad ſectam T.B. pro 100. l. ret. coram Juſtic. dom. regis apud Weſtm. à die ſancti Mich. in unum menſ. Ideo corpus ejus ad diem et locum infracontent' habere non poſſum, prout interius mihi precipitur. *Captus in execucione.*

A.B. Armig. vic.

And yet if a man be condemned in any Court, and his body taken in execution, and then he procures any Writ to the Sheriff to remove his body, &c. the Sheriff upon ſuch Writ, ought not only to return the truth, or cauſe of the Condemnation, ſc. that his priſoner is condemned

demned by judgement, or in execution, that ſo at the laſt the priſoner may be remanded; for he ſhall not be let to Mainprize, but be ſent back to Priſon, thereto remain untill he hath ſatisfied the Plaintiff. Fitz. 251. e. et (Stat. 2. H. 5. c. 2.) But alſo the Sheriff ought to bring in the body at the day, and according to the Writ.

Impriſ. per warr. del Juſt. de P.

Ante adventum iſtius brevis mihi direct. infranominat' H.H. commiſſus fuit gaolæ domini regis Caſtri ſui Cantabr. in comitat' infraſcr. ſub cuſtod. mea. virtute cujuſdam Warr. F.C. et I.W. duorum Juſtic' dicti domini regis ad pacem in com. prædict. conſervand. necnon ad diverſ. felon. tranſgr. et al. malefact. in eodem com. perpetr. audiend. et terminand' aſſign geren. dat. tertio die A. anno infraſcript' pro quibuſdam tranſgreſſion. et contempt' contra formam ſtatuti pro punitione vagabond. et pro pauper. et impotent' edit' et hæc eſt cauſa captionis et detent' ipſius H. Corpus tamen prædict. H. ad diem et locum infracont' parat' habeo, prout interius mihi præcipitur.

A.B. Armig' Vic'.

Captus per dar' vic.

Ego A. B. armig' vic. com. C. Juſtic' infraſcr. certifico, quod corpora R.T. & cæter. defend. infranominat. per me non capt' fuer. ſed per W.V. armig. nuper vicec' com. pred. predeceſſ. meum, et mihi per ipſum minime deliberat' in exit' ab officio ſuo. Ideo corpor. eorum coram Juſtic' infraſcr. ad diem et locum infra content' habere non poſſum, prout interius mihi precipitur.

A.B. Armig. Vic.

Mandavi ballivo.

Virtute iſtius brevis mihi directi mandavi ballivo libertatis T. Epiſcopi E. ad capiend. & arreſtand. infranominat' I.S. in forma infraſcript' qui plenum habet retorn. omnium brevium et preceptor. et executionum eorundem infra libertatem pred. Ac quod nulla execut' iſtius brevis per me fieri poteſt infra eandem libertatem; Qui quidem ballivus nullum mihi adhuc dedit reſponſum; vel ſic, qui mihi reſpondit q. infranominat' I.S. non eſt invent' in balliva ſua; vel ſic, quod cepit corpus infranominat' I.S. cujus quidem corpus ad diem et locum infracontent. parat. habet ad fac', ea omnia quæ iſtud breve in ſe exigit et requirit.

Habeas corpor' Jurator.

Habeas corpor' Jurator'. Vide hic Retorn' de Venire facias.

Retorne de Habere fac. Seiſinam.

Habere fac. ſeiſinam.

Virtute iſtius brevis mihi directi, Juſtic' infraſcript. certifico, quod tali die et anno infraſcript. habere feci *A. G.* plenam ſeiſinam de uno meſſuag. cum pertin. in *S.* infraſpec' in omnibus prout iſtud breve in ſe exigit et requirit.

Note that in an Habere fac. ſeiſinam, the Garniſhment muſt be upon the Land. 22. H. 6. 38.

And the Sheriff in Caſes where Land is recobered, is to put the party in poſſeſsion and ſeiſin by a twig, bough, clod, or the like, Br. Rediſſ. 5. et Perk. 42.

Or if the Recovery be of an house, then the Sheriff may put the party (who hath recovered the house) in Seisin or possession thereof, by delivering to him the Ring of the dor of the house, &c.

Or otherwise the Sheriff may open to him the dor of the house, and bid him to enter into the same house, and to take Seisin, or possession thereof by force of the Recovery, &c. Perk. 43.

And if the Recovery be of a Rent, the Sheriff may put the party (who hath recovered the Rent) in seisin thereof, by the Corn or grass growing upon the Land, out of which the Rent is issuing: Or by the twig or bough of a Tree growing upon the same Land; or by Distress of Cattel Levant, and Couchant upon the same Land; Or by a clod of the same Land. And this is a good Seisin of the Rent, notwithstanding that the day of payment of the Rent be not then come.

Mes le party ne poet chaser tiels avers ove luy hors de mesme le lieu. Perk. 42.

Of a Rent recovered the Sheriff may deliver Seisin by Distress, &c. Fitz. Assise, 444. or may deliver Seisin by parol, or by any parcel of the Land, out of which the Return is issuing (Fitz. 179. b. as by a twig, or clod. Br. Redis. 5. et Seisin 7. 14. 30.

Or by delivery of any upon the ground. Br. Seisin 14. Mez. ibid. is. contra.

Virtute, &c. tali die et anno infrascr. habere et assignare feci infranom. *A.G.* plenariam seisinam, de manerio et tenemento infraspec. in loco convenienti, viz. de manerio de F. 20. acr. terræ, 100. acr. prati, &c. cum pertinen. in F. &c. in com. infrascr. secundum formam et effectum, &c. *Aliter.*

Virtute istius brevis mihi directi 26. die *O.* anno infrascript. habere feci infranom. *N.S.* plenar. seisinam de et in tenementis infraspec. cum pertinen. prout interius mihi præcipitur. *Aliter.*

A. B. Ar. Vic.

Nota q. le defendant apres Judgement poet enter on distrein dent ascun seisin deliver a luy parle vic. ses br. de Habere facias Seisinam, sc. lon ter. Rent. ou anter chose in certen est demand. Co. L. 34. b.

The Sheriff returns, that he offered to the Demandant Seisin (by mets and bounds) &c. and that he refused it; this is a good Return, Dyer 278.

But if the Sheriff returns that he offered Seisin to the Demandant, who refused it, *Nul alias habere fac. Seisinam serra grant.* Dyer, ibidem.

Upon an Habere fac. Seisinam, the Sheriff returned that none came to receive Seisin, &c. Fitz. Execut. 248.

The Sheriff returned, that the Sheriff himself was tenant, and so he could not serve the Writ, &c. Br. Retor. 46.

Br. Ret. 89. But in an Habere facias seisinam, it is no good return that there is no such land, &c.

Neither is it any good return, that another is tenant of the Land by right: Or that he against whom the recovery is had, hath nothing in the Land, or is not Tenant thereof; and that therefore he could not enter to make execution of the Writ, Co. 6. 52. et Plo. Mauxels Case, fol. 13. 14. et Fitz. Retor. 91.

Nota

Nota que ſur habere fac. ſeiſinam. direct al vic. il doit execute le br. comt. q. in fait eſtranger ſoit ſeiſi del terr, & nul de les partyes al br. fuit unq. ſeiſi de ceo: Et tiel eſtranger ne punier le vic pro feſance le Commandement le Roy done per ſon briefe. Plo. Mauxels Caſe, fol. 12. b. et Co. 6. 52.

If a man recover Lands in three towns, and hath a Writ of Execution awarded to the Sheriff, the Sheriff may deliver him execution and poſſeſsion of the Land in one Town, in the name of all the Land, and it is a good execution for all the Lands recovered in all the three ſeveral Towns, per Curiam in Communi Banco 31. Eliz.

Note that upon an Habere fac. Seiſinam, as alſo upon an Habere fac. poſſeſſionem, if the Sheriff ſhall duly execute the Writ, and that the Plaintiff or demandant have his demand there, though the Sheriff returns not the Writ, it is not material. Hic cap. 38.

The Sheriff returned that he could not deliver Seiſin by reaſon of reſiſtance, made by I. B. and other perſons unknown, and was amerced for that he might have taken Poſſe Comitatus, Fitz. Execution 247. Vide 8. R. 2. Fitz. Suggeſtion 15. tiel retorn allow.

Upon the Habere fac. Seiſinam, or poſſeſſionem, the Sheriff may break open the houſe, to deliver ſeiſin or poſſeſsion. Co. 5. 91.

Retorn' de habere fac. poſſeſſion. cum fieri fac'.

Habere fac. poſſeſſ. VIrtute iſtius brevis mihi direct. viceſimo quarto die Maii, anno infraſcript. habere feci infranominat. *H. H.* poſſeſſionem termini ſui infraſcript. de tenementis infraſcript. cum pertinen'; ac etiam fieri feci de terris et catallis infranominat. *W. W.* xx. s. parcel. dampnorum infraſcr' et denarios illos habeo coram Juſt. infraſ. ad diem et locum infracontent. ad reddend præf. *H. H.* prout interius mihi precipitur.

A. B. Armig' Vic'.

Aliter. Virtute, &c. Juſtic. Infraſcript. ad diem et locum infracontent. certifico, quod tali die et anno, habere feci infraſ. *I. F.* et *M.* uxori ejus, viſum de meſſuag. &c. infraſpecificat. cum pertinen. Et dixi *A. B. C. D. E. F. G. H.* quatuor milit. de com. meo (or, ex illis) qui viſui ill. interfuer. quod ſint coram Juſtic. prædict. ad diem et locum infraconten. ad teſtificand. viſum ill. prout interius mihi precipitur. Libr. Intrac. 686.

Aliter. Virtute, &c. domini regis huic ſcedulæ annex. habere feci *I. G.* in eodem brevi nominat. viſum de lx. acr. paſtur. cum pertinen. in *G.* quas *H. F.* in cur. dom. regis coram Juſtic. ſuis apud Weſtm. clam. ut jus et hæreditat. ſuam verſus præd. *I. G.* per breve dom. Regis in forma donationis in diſcend. Et dicti qnatuor milit. qui viſui ill. interfuer. quod ſint coram Juſtic. dict. dom. regis apud Weſtm. ad diem in dicto brevi ſpecificat. ad teſtificand. viſum ill. prout in eodem brevi mihi precipitur.

Habere fac. viſum. Virtute, &c. Juſtic. infraſcr. certifico, quod nullus ex parte *R. S.* venit ad oſtendend. mihi viſum de meſſuag. et pratis cum pertinentiis, infraſcr. Ideo ad execution. iſtius brevis per me nihil actum eſt ad præſens. Fitz. Retor. 103.

Nullus venit ad me ex parte infranominat. *R. F.* ad monſtrand. mihi viſum de paſtur. infraſpecificat'. ob quam cauſam viſum de paſtur. ill. infraſ. *R. F.* habere facere non potui.

Note

Note that in real actions, where the Tenant doth not well know the Land demanded, he may pray the view, ſc. that he may be ſhewed which is the land demanded.

Alſo the Sheriff is not bound to know, or to ſeek the Land demanded; and therefore, except the demandant ſheweth it to him, he may make his Return accordingly.

And therefore theſe be good Returns.

Nullus venit ex parte petentis ad oſtendum mihi Tenementa petita, & Idee dicto T. S. (*petenti*) *de Tenentis infraſpec. habere viſum ad præſens non potui*, or *non feci.*

En precipe quod redd. br. iſſit de fer le tent. aver le view, le vic. retor. q. il maund. al Bayliff dom. Franch. que reſpond. q. le demandt. ne vient pas per. fer. le view, ou il ſint preſt. &c. Fitz. proces 5.

Le vic. Retor. q. le tenunt ne vigne p. d'aver le view. Fitz. view, 126. *vic. retor. q. il eſt priſt. a fer le view, & nl vient de part le tent. de aver le view.* Fitz. view 156.

See plus hic poſtea tit. Br. de View.

Note that upon a Writ of View, it is a good return, Quod nullus venit ex parte petentis ad demonſtrandum, (or oſtendendum) ſibi terram; for the Sheriff is not bound to know, nor to ſeek the Land, 14. H. 6. 20. & 32. H. 6. 27. Fitz. Retor. 103.

And if the demandant ſhall ſhew to the Sheriff a Strangers Land, by force whereof the Sheriff enters, &c. yet is he no Treſpaſſor. Keil. 119, 120.

Precipe de Rent, the Tenent demands the view, which was granted, and the Sheriff returned, feci habere viſum in Decem ſolidos redditus, and this was challenged, for that the return ought to have been, feci habere viſum de terra unde Redditus, &c. 41. E. 3. Fitz. Retor. 70.

When the Sheriff maketh the view, he ought to warn the Tenants and Veyors; for otherwiſe the Tenants ſhall not know when the Sheriff maketh the view. Quære & vide. Fitz. view 156. And the Sheriff and Veyors muſt go to the Tenements demanded, &c. And the Sheriff muſt have with him ſix (at the leaſt) of the Jury to take the view. Co. L. 158.

En br. de Droit le vic. ne poet record. il view ejus ſans les veyors, ſc. *le 4. Chivalers q. dever le view teſtimoigne.* Fitz. view, 164.

Nota ou terr. ove meaſon ſont en demand, cheſcun parcel Sa. miſe in view, Aut. eſt de Manner, cer de Manner riens Sa. miſe in view, mes la Scite ove les appert. & ney per parcels, &c. Fitz. View. 115.

Le vic. retor. q. le defendant fiſt. le view de meaſon, & vender al view, &c. Et qt. al x. acres le defendant dit al t. q. ceux x. acres de terr. fuer. in tl. field per certen nom. eaſt, weſt, north, & ſouth. ſans amẽſne le party al aſcun parcel, &c. Et le view tenus bon. Fitz. view. 134.

In an Aſſiſe of Land in two Towns, the view ought to be made in both Towns of Aſſiſe 122.

The view in an Aſſiſe, ought to be made where the Deiſſeiſin began. F. Aſſ. 28.

Where part of a Manor, or the like, is in demand, yet the view ſhall be of the whole. 11. H. 4. Br. view. 39.

So where a moyetie, or third, fourth, or other part of houſe or Land is only in demand, yet the whole ſhall be put in view. Br. view. 46. 71.

If a rent be granted, but out of no land, and yet certain land is charged to the diſtreſs if rent be behinde, there in any aſſiſe this land ſo charged ſhall be put in view. Br. aſſ. 150.

If a Rent be granted out of one land, and other land within the ſame County charged to the diſtreſs, here both theſe lands ſhall be put in view. Ibid.

Viewers als veiours, are thoſe that are ſent by the Court to take the view of any place in queſtion, for the better deciſion of the right: Old Na. bre. 112. Bracton lib. 5. tract. 3. c. 8.

It ſignifieth alſo thoſe that are ſent to view ſuch as eſſoine themſelves de malo lecti, whither they counterfeit, or be in truth ſo ſick as they cannot appear. Br. lib. 5.

It is uſed alſo for thoſe that are ſent or appointed to view an offence.

And *view*, ſignifieth the act of theſe viewers. Minſh.

Homine replegiand'.

Homine repleg.

VIrtute iſtius, &c. domini regis interius nominat. certifico quod nullum aliud breve, vel mandat' dict. domini regis de repleg. infraſcript. I. C. quam W. S. infranomin. cepit et capt. tenet, prout interius ſpecificat. quam iſtud breve de plur. repleg. præd. I. ad manus meas devenit, nec mihi liberat. fuit. Nihilomin. Juſtic. dicti domini regis ulterius certifico, quod ſtatim poſt reception. ejuſdem brevis acceſſi ad prædict. W. S. de repleg. faciend. prædict. I. quam præd. W. mihi oſtendere noluit, ſed præd. I. ante adventum iſtius brevis ad loca mihi incognita elongavit, & poſt receptionem ejuſdem brevis, ipſa I. non eſt invent. in balliva mea, ſic quod aliquam repleg. ipſius I. juxta mandat. hujus brevis ullo modo facere non potui, prout interius mihi præcipitur.

Alter.

Nullum aliud breve præter iſtud de replegiand. infranomin. D. G. ad manus meas hucuſque devenit. Et ulterius, Juſtic. infraſcript. certifico quod prædict. D. elongatus eſt ad loca mihi ignota, per infranominat. I. T. I. B. & T. R. per quod prædict. D. repleg. non poſſum, prout interius mihi præcipitur.

In a Writ de Homine Replegiando, it is a good return for the Sheriff to ſay, that the defendant claimeth the plaintiff to be his villaine, per quod ipſe ulterius facere inde non poteſt, &c. Fitz. Ret. 47. et 58. Sed vide 32. E. 3. Fitz. Ret. 87. contra, that ſuch a return was diſallowed, and a ſicut alias was awarded. 8. H. fol 2. Br. 104.

And yet vide Fitz. fol. 66. f. & 68. b. that upon ſureties found (in Court) by the plaintiff to yield his body, &c. he ſhall have a ſpecial Writ to the Sheriff to deliver the plaintiff, &c.

If the defendant claimeth the plaintiff to be his Ward, (in a Writ de Homine Repleg.) it ſeemeth to be a good return for the Sheriff to ſay ſo; and the plaintiff may have a ſpecial Writ, &c. ſhewing that he holds the ſame land of the defendant in Socage, and not by Knights ſervice, commanding the Sheriff to deliver the plaintiff, &c. and to take pledges of the defendant for his appearance, &c. and to anſwer the plaintiff, &c. Fitz. 67. a.

In a Writ de Homine Repleg. if the Sheriff return that the defendant hath eſſoined (or conveyed away) the body of the plaintiff, ſo as he cannot make deliverance, &c. Then the plaintiff ſhall have a Capias in Withernam to take the body of the def. and him to detain, &c. untill, &c. (be he a Peer of the Realm, or other common perſon:) And if the Sheriff Fitz. 68. c. Ret. 51.

Cap. in Withernam.

riff return Non eſt inventus upon this Capias in Withernam for the body; then the plaintiff ſhall have a Capias in Withernam of the goods of the defendants. 11. H. 4. fol. 15.

In a Homine Repleg. the Sheriff returned that he could not have the view, &c. Et Ideo, &c. Fitz. Mainpriſe 23. Intr. 402.

CAP. 64.

Retorn. brevis ad Inquirend. de Dampnis in breve de Dote, ubi tenens obiit ſeiſitus: See hic antea Retorn. de Dote.

Retorn. brevis ad Inquirend. de Dampnis in breve de Tranſgreſs.

EXecutio iſtius brevis patet in quadam Inquiſitione, &c. Inquiſitio indentat. capta apud W. in com. C. (tali die & ann.) coram R. W. Armig' Vic' ejuſdem com' virtute cujuſdam brevis domini regis eidem Vic' direct', et huic inquiſitioni conſut', per ſacrament' R. S. &c. (ad numerũ 12. Jurator.) Qui dicunt ſuper ſacrament' ſuũ, q; A. P. in brevi huic inquiſition. conſut' nominat', ſuſtinuit dampna occaſione tranſgreſſionis pro I. H. in prædict' brevi nominat', prout in eodẽ brevi fit mentio, ad xl. s. Et pro miſis & cuſtagiis ipſius A. P. per ipſum circa ſectam ſuam in hac parte appoſitis ad xl. s. In cujus rei, &c.

Executio iſtius brevis patet, &c. (ut ſupra.)

Inquiſitio, &c. Qui dicunt ſuper ſacramentũ ſuũ, quod W. B. in dicto brevi nominat', ſuſtinuit dampna occaſione tranſgreſ. in eodem brevi ſpec' ad viginti ſolidos, & pro miſis & cuſtagiis ſuis per ipſum circa ſectam ſuam in illa parte appon' viginti ſolid. In cujus rei teſtim. &c. *Aliter.*

Inquiſitions, in what caſes.
- Upon an ad quod Dampnum. Lib. Intrac. fol. 25.
- Upon a Writ of Admeaſurement, &c. hic c. 49.
- Upon a Capias utlagatum. hic c. 54.
- Upon an Ætate probanda. hic c. 57.
- Upon an Elegit. hic c. 58.
- Upon a Writ to enquire of damages. c. 56. & 77.
- Upon an Extent of a Statute, or Recog. c. 58.
- Upon a Partition. hic c. 68.
- Upon a Proprietate probanda. hic c. 73.
- Upon a Rediſſeiſin.
- Upon a Secunda Superoneratione. c. 76.
- Upon a Writ to enquire of waſte. c. 79.

The Sheriffs are firſt to ſwear the Jury, and to give them their charge.

Inquiſition priſe (& Retorne) ſil ne m're le certenty del Ann, jour, & lieu, del inquiſition priſe, ſemble neſt bon.

Et ſi le brief voile que le enqueſt doit eſtre priſe al un certen jour, le vic. doit Retorne que il fuit priſe a meſme le jour. per Belk. 40. E. 3. Fitz. Ret. 64.

On le vic. eſt de faire inquiſition (per 12. homes, &c.) Et le Jury appear, & ont lour charge, &c. Et per reaſon d'aſcun difficulty, le vic. done al Jurors un reſpite per certen jours, & al jour iſſint appoint al Jury de doner lour verdit, l'un del Jury fait default, Et le vic. aſſeſſe fine de 40. s. ſur luy, & retorne ceo &c. tiel doner de reſpite al Jurors ſee bon: Mes quere de tiel aſſeſſement de fine per le vic. ſur Juror de enqueſt de office, per feſants default al jour, &c. Dyer 266, See hic c. 79. that the Sheriff may return ſuch their departure and contempt.

Vnc. ſi un del Jury en un Leet depart deunt q. il ad done ſon verdit, il ſerra fine per le Seneſchall. Sed nota q. Leete eſt Court de Record, & le Seneſchall eſt Judge la, & nul freq; Judge de Record pt. impoſer fine (vide per ceo. Co. 8. 38, 41, & 60.)

Et iſſint ſee. on le vic. eſt fait Judge del cauſe, come ſur enquiry de waſt.

Lon le vic' eſt de faire inquiſition, ſemble que nul des dits inquirors pot. eſtre Challenge, per c. q. il. ne ſont freq. de office. Vide Kiel. 125. & hic c. 79. & quære. & Stamf. 131. a.

Si vic. fait faux Retorne, Action ſur le caſe giſt vers luy; Mes on le vic. priſt & enquire per enqueſt, & retorne ceo, comt. q. ceo ſoit faux, vnc. le party n'ad remedy vers le vic. ne vers aſcun auter. Co. 5. 32. *quod Nota, & ſoit bien obſerve per tots vic.*

Vnc. in bre. de enquire de waſt, challenge ſa priſe, & ſil ſoit deny per le vic. ceſt eſt error. Eadem lex in Rediſſein. Br. Office 4.

Et iſſit le vic. fera le Pannel, & vnc. judgera ceo d'eſtre quaſh, ſi cauſa ſoit. Ibid.

Anxi in Proprietat. probanda les parties pot. aver leur challenges. Co. L. 158. b.

Si le Jury trove choſe ſa. gart, & le vic. pit. on retorne ceo il ſa. amerce. Fitz. verdit. 37. vide hic c. 79.

In every caſe the Sheriff muſt make his enquiry by 12. men; and muſt return their inquiſition under his and every of their Seals by judgement.

And he muſt charge the Jury to make enquiry according to the Writ.

Upon an Inquiſition taken by the Sheriff, if any doubt ſhall ariſe, &c. the Sheriff may return that he and the Jury were in doubt, ſhewing wherein, and ſo pray the advice of the Court therein. Hic c. 58.

CAP. 65.

Retorne de Levari facias.

Levari fac. T. F. infraſcriptus nulla habet bona ſive catalla in balliva mea, de quibus denarios infraſcriptos, aut aliquam parcellam inde levare poſſum, prout interius mihi precipitur, &c.

Aliter. Virtute, &c. cepi in manus domini regis quoddam hoſpitium cum tribus ſhopis (in tali loco) ipſius I. T. infraſcript', quæ valent per annum ultra repriſ. x. l. Et quod prædict. hoſpitium cum ſhopis prædict. ſalvo cuſtod'. donec aliud a vobis inde habeo in mandatum. Regiſt. 300. tit. 28. Fit. 266.

Upon a Levari fac. if the Sheriff returneth that he hath levied x. l. of the ſum, &c. the which he hath delivered to the party, &c. this ſeemeth

ſeemeth to be a good return: and upon this return the party may ſue a Sicut Alias levari fac. directed to the Sheriff to levy the reſidue. Fitz. 265. h.

Vide 4. ſorts of Writs de Levari facias. Minſh. verbo Levari fac.

Lattitat.

Non eſt inventus retorne ſes Lattitat. Libr. Intr. fol. 109. c. 166. d.

Alſo Cepi Corpus, and other returns may be made upon a Lattitat, as upon a Capias ad reſpond. as it ſeemeth.

Retorne de Liberate. *Liberate.*

Upon a Liberate, if the Sheriff hath duely executed the Writ, and paid the money to the plaintiff, he needs not return the Writ. hic cap. 38.

Virtute iſtius brevis) tali die & anno) liberavi L. S. infranom. maverium infraſpec. cum prat. tenend. ſibi & aſſig. ſuis ut liberum tenementū ſuū, quouſq; ſibi de debito infraſcr. una cum dampnis, miſis & expenſis, qua in hac parte rationabiliter ſuſtinuit plenar. ſatisfac. fuerit, prout iſtud breve exigit & requirit, I. S. infranominat. non eſt inventus in balliva mea. Libr. Intr. 598.

Nota q. Liberate, eſt priſe in divers manners.

1. *Eſt bre. al vic. per deliver ters ou bie. priſe ſes forfetur dum, &c. come icy.*

2. *Eſt warrt. grt. al Treaſurers & auters del Eſchequer, per le payment de aſcun annal penſion grt. ſouth le grand ſeale.*

3. *Eſt warrs. al Gaoler per deliver priſoner, &c. t̄mes del ley.*

CAP. 66.

Retorne de Mandavi Ballivo Libertatis.

VIrtute iſtius brevis mihi direct. mandavi I. D. ballivo Libertatis T. Epiſcopi E. ad capiend. & arreſtand' infranominat. I. S. in forma infraſcript. qui plenum habet retorn' omniū breviū & preceptor', & execution. eorundē infra libertatē pred. Ac quod nulla execut' iſtius brevis per me fieri poteſt infra eandē libertat': qui quidem ballivus nullum mihi adhuc dedit reſponſum, vel ſic: qui mihi reſpond. quod infranominat' I. S. non eſt inventus in balliva ſua, vel ſic, quod cepit corpus infranom' I. S. cujus quidem corpus ad diem & locū infracontent' parat' habet ad fac' ea omnia quæ iſtud breve in ſe exigit & requirit. *Mandavi ballivo.*

A. B. Armig. Vic.

Fitz. 137. b. Vide Co. L. 100. a. b. 13. E. 1. c 9.

In a Writ of Meſne the proces at the Common Law was only a Diſtr. infinite, in the ſame County where the land lyeth; but at this day (vide Co. L. 100. b.) the Plaintiff may chuſe whether he will ſue by proces at the Common Law, ſc. Diſtr. infinite, or by proces which is given by the Statute of 13. E. 1. ſc. ſummons, attachment, and the great *Meſne.*

great diſtreſs, which ſhall have day of return by ſuch time, that two Counties may be holden, in which two Counties the Sheriff ſhall cauſe to be proclaimed ſolemnly that the Peſne do come at the day contained in the Writ, to acquit the tenant or plaintiff, &c. and if he come not, and the Sheriff returneth the Writ accordingly, then the Peſne ſhall loſe the ſervice of the plaintiff, &c. See hic c. 102. & Co. L. 100.

Retorne de Brief de Medio.

Summonit. Manucaptor. prout. in alio breve.

Et ulterius vobis Juſtic. reſpondeo, quod in pleno Comitatu meo tent. apud. C. &c. die, &c. publice proclam' feci, quod predictus H. veniret coram Juſtic. infraſcript. &c. ſi voluerit, prout per iſtud breve mihi precipitur, &c.

Si in ceo bre. de meſme le vie' retorne Nihil habet, &c. vnc' laiſſera un attachment, & ſi le vic. retorne Nihil auxi a cel bre. vnc iſſera un grand deſtreſs ove le proclam. ut ſuper.

Nihil. Nihil habet Medius unde poteſt ſummoniri: which being returned upon that attachment Nihil habet per quod poteſt attachiari. After upon the grand diſtreſs Nihil habet per quod poteſt diſtringi. } Vide ſtat. Weſt. 2. c. 9.

Retorn. ſuper breve de Ordine Militari recipiend.

De ordine milit' recipiend. VIrtute iſtius brevis tàm infra libertates quã extra, per totam ball. meã, publice proclam. feci, q; omnes & ſinguli perſon. terr. tent' & redd. ut infraſcript' eſt habent', (quorum nomina in quad. ſcedula huic brevi annex. ſunt ſcript') ad præſentiã domini regis circa feſtem infraſpec. perſonaliter compareant, & accedant ad pref. ordinẽ recipiend. prout interius mihi præcipitur.

Milit. Parliament. Eligend. Milit. Parliamenti. See antea & hic poſtea.

CAP. 67.

Retorne de bre. de Nativo habendo.

Nativo habendo. THis Writ may go out to the Sheriff to hold plea of the matter in his County, or it may be returnable in Banco. Fitz. 78. a.

Upon this Writ ſued out by the Lord, and directed to the Sheriff, the Sheriff may ſeiſe the villein (if he can) and may deliver him to the Lord, if the villein ſhall confeſs to the Sheriff that he is a villein; but if the villein ſhall alledge to the Sheriff that he is a free-man, then the Sheriff may not ſeiſe him, but then the Lord muſt ſue out a Writ called a Pone, to remove the plea before the Juſtices of the Common Bench. Fitz. 77. a c.

Alſo where the villein ſhall purchaſe a Writ de Libertate probanda, the Sheriff is to proceed no further in the Writ de Nativo habendo; for Fitz. 77. d.

the

the Writ de Libertate probanda, is as a Superſedeas, and thereupon the Sheriff is to adjorne the record or plea before the Juſtices, &c. Br. villen. 45.

Upon the Libertate probanda the Sheriff returned, that no ſuch Writ de Nativo habendo was delivered to him, nor that he had no ſuch plea depending before him in his County. Br. villen 45.

Upon a Nativo habendo the Sheriff returned Mandavi ballivo Libertatis, &c. Qui nihil decit (*or fecit*) &c. Fitz. Ret. 52. Br. villen 16.

The Sheriffs of London in a Nativo habendo returned that (by their cuſtom) if a villen were abiding in London by a year and a day, that he was not to be taken out, and it was holden a good return. Br. cuſtom 22. et Ret. 46.

In a Nativo habendo the Sheriff may not return that the defendant is a free-man, &c. for that muſt come from the party himſelf. Br. Ret. 46.

Vide le Retorne de Pone de Remover le plea in Nativo Habendo. Liber. Intrac. fol. 436. b. c.

Admeaſurem' de { Dower / or / Paſture } The plaintif ſhall have the like judgment, as if the writ had been returned ſerved. Br. Admeaſ. 7.

Aſſiſe, the Aſſiſe ſhall be taken.

Brieſe de Gard, the plaintif ſhall have judgement as if the Writ were ſerved. Br. Ret. 101.

Brieſe de Meſne, Prices ſhall go out to forejudge the Meſne. Vide Co. L. 100. a. b. who ſhall be bound by forejudg. and who ſhall not.

Quare impedit, Vide hic, Return of a Quare impedit.

Scire facias, Two Nihils returned do counterhaile Scire feci.

Sur Nihil Retorne in 1 H. 7. 3. a.

Upon a Scire facias to execute a judgement in Debt, Treſpaſs, or Annuity, if at the firſt day the Sheriff ſhall return Nihil, the plaintif ſhall have execution.

In an Accompt, the defendant was outlawed, and obtained his pardon, and had a Scire facias againſt the plaintiff, who was returned Nihil, and the pardon was allowed upon one Nihil returned, &c. 21. E. 3. Br. Retor. 109.

Scire facias vers executors, ſur deux Nihils retorne, ils ſerra condemne, & charge de lour proper biens. Co. 5. 32.

Brieſe de Waſte, The plaintiff ſhall have judgement, as if the Writ were ſerved. Br. Ret. 101.

Retorn. brevis ſi defend. ſit inſuffic' &c.

Pleg. d e proſeq. { J. D. / R. R. }

Nihil. Infranominati A. B. et C. D. nihil habent in balliva mea per quod ſum' poſſunt, (if it be in debt, or other Writ where ſummons lyeth.) *In Debt.* Infrano-

In treſpaſs. Infranominati H.B. & C.D. nihil habent in balliva mea per q; attachiari poſſint (or poteſt, if but one defendant.)

Note if there be moe defendants then two, then you muſt name but one, & cæteri defend' infranominati, nihil habent, &c.

Sur Diſtr'. Infranominatus A.B. nihil habet in terris, tenementis, et hereditam' infraſcript', per quod ipſum diſtringere poſſum.

Or thus: Nullum tale manerium, neq; ulla terr. ſive tenta, cognita per nomen de E. jac' in com. Cantabr. unde tenentes inde diſtringere poſſum, prout interius mihi præcipitur.

Sur Fieri fac'. Infranominatus R.B. miles nulla habet bona ſeu catalla, terr. aut tenta. in balliva mea, unde denar' infraſpec' fieri fac' poſſum, prout interius mihi precipitur.

Sur Scire fac'. Infranominatus A. B. nihil habet in balliva mea per quod ei Scire facere poſſum, neq. eſt inventus in eadem.

A. B. Armig' Vic.

Plus hic fol.

CAP. 68.

Partitione.

Retorna brevis originalis in partitione.

P Leg' de proſeq. { *J. D.* / *R. F.*

Summ' infranominat' B.R. & E. uxoris ejus. { *W. H.* / *H. S.*

A. B. Armig. Vic.

Note that ſuch a return may be made in all other actions real, if the defendant be ſufficient.

Nota quand judgement ſerra done ſur bre. de Partition, le judgement ſerra tiel, ſc. que partition ſerra fait inter les parties, Et que le vic. en ſon perſon altera a les terrs & tenements, &c. Et q. il per le Serement de xii. loyal homes (de ſon bayliwick, ou County) ſera Partition enter les parties; Et que lun part de meſme les terrs & tents. ſoient aſſignes al Plt. ou al un des Plts. & un anter part al un auter, &c. Et de le partition que le vic. iſſint fera, il doit doner Notice al Juſtices (per ſon Retorne) ſouth ſon Seale, & les ſeales de cheſcun de les xii. Jurors, &c. Et le vic. ne pt. retorne ql. partition il voile. Littl. 248, 249. Co. L. 169.

Et in tiel caſe, le eigne ſoer n'avera mye le primer Election, mes eſt al election del vic. de aſſign. le eigne ſa part, & l'auters lour parts: Et il pt. aſſign. premerment un part al puiſne, & dareignemt al eigne, &c. Ibid.

Et ſic nota q. le Partition ſera fait per le Jury, que doyent ſ. ceo egalment; & donque le vic. pt. aſſign. lun part al un, & l'auter part al auter, a ſon election.

Mes le vic. doit Summon les parties d'ce dent luy qt. il fait le Partition.

Sur-

Sur br. de Partitione fac. inter 2. Parceners, de 2. Mannors, le vic. pt. aſſigne lun Mannor a lun, & l'ant Mannor al auter per Littl. 12. E. 4. fol. 2. *Tamen per Broke, hoc videtur intelligi, ou les Mannors ſont de equal values. Et eadem lex de 2. Acres.* Br. partit. 29.

Sur br. de partitione fac. (ſur le Stat. 32. H. 8.) *le vic. retorn le partit. fait per xii. loyals homes, & apres un des parties ſurmiſe inequality, & prein novel briefe; quære ſel avera.* Dyer. 73.

A. & B. *tenants in Common d'un Mannor.* A. *purchaſe frank tenement iſſint mixt ove les demeſne terrs, q. fuit Diſconus:* B. *pet. br. de partition del Mannors tantum, & Judgement fuit done quod partit. fieret: Et br. fuit direct. al vic. de faire partition accordt. Et fuit tenus per les Juſtic', que* A. *doit mr. les bounds de ſon franke. ou la certenty, ou number des Acres del ters p. luy iſſint purchaſe, &c. Et q.* B. *ne beſoigne de mr. les bounds del Mannor al Jury. Mez ſi Evidence ſoit done de nul part. & le Jury fait partit. de tanto quantum preſumitur & dignoſcitur per preſumptiones, &c. ſufficit: Cerilz, ſont combellable de ſerver le Ley, & le Court, Et comt. que nul des parties uſt done evidence, uncer le vicount, & le Jury ſont de faire partit. a lour perils.* Dyer. 265, 266.

Si villen diſcend. al 2. Parceneurs, Comt. perſon. ne pt. ec. devide, unc. le profit de luy pt. eſt. divide; coe. un Parcener pt. aver. S. Servic. 1. jour, ou 1. ſemaigne, &c. & l'auter Parcener, auter jour, ou auter Semaigne, &c. Do. L. 32. & 164.

So an Advoulon may be divided betwæn Parceners, ſc. the one to preſent one return, and the other another turn, &c. Co. ibid.

So a Rent charge may be divided, &c. ibid.

Mez. Eſtovers, coe. Honſboote, Heyboote, &c. *Piſchary incertein; Com. ſans number,* &c. *ne poet ee. divide.* Ibid. vide.

The profits of a Mill, of a Dovehouſe, of Courts, of Tythes, and of ſtallage of a fair, may be parted. Dr. & Co. L. 32.

The Return of a Writ of Partition.

Executio iſtius brevis patet in quadam inquiſitione huic brevi annex'.

Virtute brevis dom. regis mihi direct' et huic particion. Indentat' anex' Ego, *I. D.* miles Vic. com. prædict. xx. die *A.* an', &c. xx. aſſumptis mecum *I. S.* &c. xii. liberis et legalibus hominibus de com. meo, ac de viſnet' infraſ. in præſentia *H. F.* in brevi prædict' nominat', in propria perſona mea acceſſi ad tenementa in dicto brevi nominat' & ibid. per eorum ſacrament' (habito reſpectu ad verum valorem eorundem tenementorum cum pertin.) eadem tenement in particionem in tres partes equales partiri feci, & unam partem eorundem trium partium, viz. xii. pedes in longitud. & xviii. pedes in latitud. meſſuagii in prædict' brevi ſpecificat' extend. ad terr. *F. G.* vocat' *B.* verſus le Weſt, & xxxiv. pedes in latitud', & xii. virgat. in longitud', & unius Gardini in breve pred. ſpecificat' eidem meſſuagio adjacen. abbut' verſus le Weſt ad terr. pred. *F. G.* vocat *B.* & terr' gleb' rector de *S.* Nec non, &c. Et ego præfat. vic. pred. xx. die *A.* anno, &c. ea deliberari & aſſignari feci *H. F.* in dicto brevi nominat', tenend. ei in ſeparalitate, ſecundum formam & effectum brevis pred. Ac prout idem breve in ſe exigit & requirit. *Partitione.*

Quæ quidem integri tertia pars pred. tenementorum in pred. brevi ſpecificat' pref. *H.* in formam pred. deliberat' & aſſignat. eſt, & quo ad duas partes reſiduum pred. tenementorum in brevi prꝫd. ſpecific' *I. F.* in

eodem brevi ſimilit' nominatus, ad particionem pred. deliberand. & aſſignand'. Juſtic. dom. regis in brevi pred. ſpecificat' certifico, q. nullus ex parte ipſius *I.* venit ad recipiend' de me præfat' vic' eaſdem duas partes. Ita quod duas partes illas præfat' *I.* liberare & aſſignare non potui, prout breve prædict' in ſe exigit & requirit. In cujus rei teſtimonium tam ſigillum mei præfati vic. quam ſigilla prædict. xii. Jurator', huic particioni Indentat. ſunt appenſ. dat die & anno ſupradicto.

Aliter. Ego *A. B.* armig. vic. Com. pred. Juſtic. in breve huic ſcedulæ annex. ſpecific. Certifico, Quod virtute brevis illius in propria perſona mea. x. die Aug. Anno, &c. acceſſi ad meſſuagium in breve pred. ſpecificat. & per Sacramentum *I. S. R. B. &c.* (ad numerum xii.) probor. & legalium hominum de Com. pred. ac viſnet in eodem breve ſpecificat. habito reſpectu ad verum valorem ejuſdem meſſuagi, eundem meſſuagium cum pertin. in quatuor equales partes partiri feci, unam partem partium illarum, viz. &c. Tenend' *H. S.* & *F.* uxori ejus (in breve præd. nominat.) in ſeparalitate, per metas & boundas in jure ejuſdem *F.* Aliam partem inde, viz. &c. tenendum *I. C.* et *M.* uxori ejus (in breve pred. nominat.) in ſeparalitate, in jure ejuſdem *M.* Et duas alias partes inde. *viz.* &c. tenendum prefato *I. S.* in ſeparalitate, in jure ſuo proprio. Et ego prefatus vic. die & Anno ſupradict. eaſ. deliberari & aſſig. feci prout idem breve in ſe exigit & requirit. In cujus rei teſtimonium, &c.

Vide libro Intrac. fol. 453. c. d. The like return of a partition of certain Pannors, with the appurtenances, into two parts.

Per que ſervitia.

In a *per que ſervitia*, againſt the Heir of the Tenant, &c. the Sheriff returned, that the Tenant in his life time ſold the Land in Fee, &c. So that the Heir had never any thing therein, &c. Fitz per q. ſervic' 13. 24.

CAP. 69:

Retorn. de Summon Parliamenti.

Parliam'. EXecutio iſtius brevis patet in quibuſdam Indenturis huic brevi annex'.

Retorn. de Summon' Milit' Parliamenti.

VIrtute, &c. ſum. feci *A. B.* Militem, unum Milit' de com. meo gladio cinctum per *B. T.* & *C. B.* quod ſit coram Juſtic. infraſcrip' ad diem & locum infranominat', prout iſtud breve in ſe exigit & requirit.

Manucapt' infranominat' *A. B. B. T.* & *C. B. I. D. R. R.*

Exitus cujuſlibet eorum, xx. s.

Retorna Eligend' Milit' Parliamenti & Burgeſſ. See hic antea.

Retor.

Retor. brevis de Proclam. de Adjournamento Parliamenti.

Executio iſtius brevis patet in quadam Schedula huic brevi annex.

Virtute brevis Dom. Regis mihi directi, et huic ſchedulæ annex. Eidem Dom. Regi certifico, quod 16. die I. Anno regni dicti dom. Regis, &c. apud Cantabr. in Com. pred. & xx. die ejuſdem menſis *I.* Anno ſupradicto, apud Linton in eodem Comitat. ac. 27. die I. Anno ſupradicto apud Newmarket in eodem Com. Nec non 9. die *F.* Anno ſupradicto apud E. in eodem. Com. Proclamari feci omnia & ſingula in eodem breve content. ſecundum formam & effectum ejuſdem brevis, Et prout per breve illud mihi præceptum fuit; In cujus rei teſtim. ego *A. B.* ar. vic. Com. pred. huic. Schedulæ, ſigillum meum appoſui. *Cantabr.*

Præmunire.

Upon this Writ the Sheriff may Return, Quod Premunire fecit, &c. quod eſſet, &c. coram, &c. ad faciend. quod iſtud br. &c. git, &c. Fitz. Retor. 61.

And ſuch garniſhment ought to be two moneths before the Return. Ibidem.

The Sheriff returned that the Defendant was garniſhed generally, but ſheweth not upon what day, &c. This was holden void. Fitz. Ret. 65. Br. Retor. 56. 103.

VIrtute iſtius brevis tali die & anno per, *I.S. T.W. R.T.* & *E.F.* probos & legales homines de balliva mea, præmunire feci W. R. clerico infranominat', quod ſit coram dom. rege ad diem infracontent' ubicunque, &c. ad faciend. & recipiend. prout iſtud breve in ſe exigit & requirit; Et *I.B.* & cæteri defend. infranominat' nihil habent in balliva mea per q. eis præmunire facere poſſum ad præſens, nec ſunt invent' in eadem. Fitz. Retor. 61. & 65. *Premunire.*

CAP. 70.

Br. 125. IN a præcipe quod reddat of Land, it is a good return for the Sheriff to ſay that the Tenant is dead: 32. H. 6. 27. *Precipe quod reddat.*

Præcipe quod reddat, is a Writ of great diverſity, touching both the form and uſe, and extendeth as well to a Writ of Right, as to other Writs of Entry or poſſeſſion.

Ex parol precipe quod reddat, ſont parols de forme in tots briefs de Entree.

De qx. choſes briefs de Entree giſt. & de qx. ney, Vide Weſt. de Recoveries, Sect. 2. 3. 6. & 7.

If the Sheriff ſhall return that the Tenant, who is an Abbot, &c. is depoſed, this is a good return; for that is as much as if he had returned him dead.

But if the Sheriff ſhall return that the Tenant is an Infant, or a Feme Covert, theſe Returns are not good. Dyer 104.

In a Precipe quod reddat, the Sheriff returned, Quod defendens non

eſt tenens,& quod Nihil habet unde eum Summon. potuit, *Quære ſi bon, eo quod petens teſtatur quod tenens eſt, & pre ceo le vic. pt. aver. luy Summon in terra petita.* Vide Br. Summons, 23. & Fitz. Retor. 97. & hic cap. 36.

In a præcipe quod reddat, the Tenant avoucheth, and the Sheriff returneth (upon the Summons ad warrantizandum) that the vouchée, nihil habet, nec eſt inventus, &c. this is a good return; but otherwiſe it is in a Formedon; for that in a Formedon the Sheriff may ſummon him in the land demanded, whether he be Tenant thereof or no. Vide Fitz. Retor. 97. 14. H. 6. 20. Br. 62.

In a præcipe q. reddat, it is no return to ſay, that the Tenant hath yielded the Land to the Demandant. 2. H. 7. Br. Retorn' 84. Fitz. Retor. 34. Br. 84.

And yet the Sheriff is by this Writ authorized to Command the Tenant to yield the Land to the Demandant. Co. L. 101.

But if (upon command of the Sheriff) the Tenant ſhall yield the Land; yet it ſeemeth that the Sheriff muſt Summon the Tenant (and muſt return the ſame) for that the yielding of the Land muſt be in the Court, when the party cometh in. Kiel 116.

In a Præcipe againſt two, if the Sheriff returneth one of them Summoned, and the other not, this is no good return, but he muſt Summon them both, and ſo make his Retor. Br. 89.

In a præcipe q. reddat, if the Sheriff ſhall return the Tenant ſummoned, where indeed he was not ſummoned, whereby the Tenant loſeth his Lands by default, upon the Grand Cape returned, the Tenant ſhall have his action againſt the Sheriff for ſuch his falſe return. N. Br. 51. Fitz. 97. c.

Note that in a præcipe quod reddat of Land, there ought to be two Summoners, Plo. 393. a.

Cer ſi n' ad. q. un, & le tenant fuit default, & perde per default, il avera br. de Diſceit. Ibid. & Fitz. 97. c.

And the Sheriff or his Officer, in the preſence of thoſe Summoners ought to Summon the Tenant, firſt to keep his day of the Return (naming that in certain) again he ought to name the Demandant, and alſo to name the Land in demand. Hic. cap. 31.

In a Præcipe quod reddat, upon the Summons if the Sheriff by information of the Demandant Summoneth the Tenant in another mans Lands, thinking it to be the Tenants Lands, the Sheriff ſhall be excuſed here for this his Entry into another mans Land. Doctor & Stud. 150.

Proceſs. Return de Proces Original: ſc. Capias, Alias, & Pluries; See hic antea Retorn' de Capias.

Retorn' de venire facias: See hic poſtea.

Vide Retorn de Proclam. *De Adjournment Parliamenti*, cap. 69. *Sur utlary.* Hic cap. 59. *Extra Cancellariam*, cap. 81.

Vide Retorne de Proclam. de Summons in *Br. de Admeaſurement*, cap. 49. *Br. de Communi Cuſtodia.* Ibid. *Br. de Dower*, cap. 56. *Sur exigent*, cap. 59. *Br. de Waſt*, cap. 79.

Retorne

Retorne de Pone, ſc. *de remove Plee, &c.* *Pone.*

Pleg. de proſequend' *I. D. R. F.*

Infranominat. *H. E.* attach. eſt per pleg. *N. F. R. D.*

R. M. Mil' Vic.

Dꝛ that party may be attached by his goods, and then the Sheriff may return it thus. Infranom. H. E. attachiatus eſt per unum equum precii xx. s.

Infranom' *I. H.* nihil habet in balliva mea per q. attachiari poteſt.

Nota que cheſcun Pone eſt forſque ſummons; ſc. *Command al. vic. de Summon, on prefix. jour al parties, Plaintiff, & defendant q. ilz. ſont in Bank, &c.*

If it be in a Writ of Right, See what the Sheriff muſt Return, Hic cap. 56.

And if it be in a Replevin, the Sheriff muſt return the Plaint out of the County Court in Banco, and return the ſame under the Seals of four Suitoꝛs of the ſame Court, as followeth.

Virtute iſtius brevis mihi direct. poſui coram Juſtic' dom. regis de Banco apud Weſtm. loquelam quæ eſt in com. meo. Q. per breve dicti dom. regis, inter T. W. et H. B. de averiis ipſius T. W. capt. et injuſte detent. ut dic' prout patet in quadam ſcedula huic brevi annex. &c. *Pone ſur replegʒ.*

Dꝛ thus. Virtute iſtius brevis in forma infraſpec. poſui loquelam infraſcript. ad diem & locum infrac. outer, prout interius mihi precipitur; cujus quidem loquel. Recordum patet in Scedula huic brevi confut. ſimul cum alio breve unde infra fit mentio. Libr. Intrac. fol. 570. d.

Summon *T. P.* I. D.

Ad com. meum tent. apud C. 12. die A. anno regni dom. regis nunc, &c. 20. T. W. queritur verſus H. E. de placito captionis et injuſtæ detention. averior; Et ſunt pleg. de proſequend' et retorna habend. ſi. ret. inde adjudicet' viz. I. M. W. F. In cujus rei teſtimonium I. K. B. C. D. G. et R. S. quatuor legales homines ex illis qui recordo illo interfuer. in plena curia illa eidem record' ſigilla ſua alternatim appoſuerunt, die et ann. ſupradictis. *Scedula.*

12. E. II. Br. 103. In a Replevin a pone went out, and at the next Court the Plaintiff was nonſuit in the County; yet by Catasby, the Sheriff may ſerve the Pone, and execute the ſame (ſc. to require the view of the Plea, and to Recoꝛd and return the ſame) but Mr. Brook maketh a Quære thereof, foꝛ that by the nonſuit, it ſeemeth there reſteth nothing (oꝛ Plea) to be removed: But the Sheriff may return, Quod ad proxim. comitatum, &c. *Is Plaintife fuit non ſue. & ſic nul parol la.*

But notwithſtanding that the Plea be diſcontinued in the County, yet it may be removed by a Recordari. Vide Fitz. 71. a. et Br. Retor. 113.

And note that the Pone, and the Recordare, be only to remove the Suit into the Kings Court: And the Plaint only ſhall be removed.

Retorne ſur br. de Proprietate probanda. See hic cap. 73.

CAP.

CAP. 71.

Quare Impedit.

Quare impedit. In a Quare impedit, the Defendant muſt be Summoned by the Sheriff. Fitz. br. al. Eveſq; 4. 11. H 6. 3. Br. 101.

And this Summons may be made in the Church, or to the perſon.

In a Quare impedit, the Sheriff returned nihil, upon the Summons, and upon the Attachment, and upon the Diſtreſs, and it was holden that the Plaintiff ſhould recover, by the intendment of the Statute made Anno Tamen Martin contr'. and that the Sheriff might have ſummoned the Defendant in the Church. Vide hic c. 31.

If the Sheriff return upon a Quare impedit, Quod quærens non invenit plegios, then the Plaintiff may find pledges in the Common place, and ſhall have a new Writ of Quare impedit, and if the Sheriff return thereupon, Tarde, and the Defendant appear, and the Plaintiff be demanded and comes not, the Defendant ſhall not have a Writ to the Biſhop, for that no Writ was ſerved upon the Defendant. Fitz. 38. c.

If the Defendant comes not at the Diſtreſs returned againſt him, the Plaintiff ſhall have a Writ to the Biſhop, without making any Title, Vide Dyer 241.

Quid Juris Clamat.

Upon the Writ of Summons in a Quid Juris Clamat, the Sheriff is to return the party Summoned in this or the like manner.

Plegii infranom' { *E. F.* / *I. S.* / *I. D.* }

A. B. Arm' Vic.

In quid Juris Clamat le vie. Returne quod Cler. eſt non habens laicum feodum, &c. Et fuit adg. nul Returne cer dinſt. Diſtr. luy en le terr. en demand. Fitz. Retor. 59. Fitz. 38. n.

Quo Jure. Virtute, &c. tali die & anno, &c. Cepi in manus dom. regis tenementa infraſcript' cum pertinent. Et alterius eiſdem die & anno ſcire feci, tam *A.B.* capitali dom. immediat' feod. tent' infraſcript' cum pertinen'; quam infraſcript' H.D. per probos & legales homines de balliva mea, quod ſint coram Juſtic' infraſcript' ad diem et locum infracontent'; auditur' recogn' infraſ. prout interius mihi præcipitur. Et ulterius eiſdem Juſtic' certifico, quod non eſt alius capitalis dominus feod. prædict' mediat, neq; immediat', inter dominum regem, et infraſcript' *A.B.* cui ſcire facere potui.

CAP. 72.

Retorn' de Recordare facias Loquel. in Comit.

Recordare eſt de remover plaints in County Courts. Fitz. 70. b. *Cheſcun br. de fx. Judgement, ſer Judgement done in le County Court, eſt un Recordare de ſon in.* Fitz. 18. ab.

Virtute iſtius brevis mihi directi in pleno com. meo tent. apud C. in com' C. infraſcript' tali die & anno, recordari feci loquelam quæ eſt in eodem com' inter partes infraſcript'. unde interius fit mentio, quæ quidem loquela patet in quadam ſcedula huic brevi annex'. Et record. illud habeo coram Juſtic. infraſcript. ad diem & locum infracontent' ſub ſigillo meo, & ſigill', W. H. T. R. &c. quatuor proborum & legalium, & hominum milit' ejuſdem com' ex illis qui record. ill. interfuerunt. Et partibus infraſcript. diem illum præfixi, quod tunc ſint in loquela illa, prout juſtum fuerit proſecutur', prout interius mihi precipitur. *Recordare.*

Ad com. meum tent. apud C. in com. pred. tali die & anno, coram W. H. S. S. T. V. & A. B. quatuor ſectator. curiæ præd. inter alia ſic conſtinetur. *Scedula.*

R. S. queritur verſus I. T. de placito captionis & injuſtæ detentionis averiorum ſuorum (contra vad. & pleg. &c.) Et ſunt pleg. de proſ. Necnon de return. habend. ſi retorn. adjudicet'. *Loquela.*

Pleg. de proſ. I. D. R. F. In cujus rei, &c. Ut autea in Retorne de Pone.

Virtute iſtius brevis mihi directi recordari feci loquelam quæ fuit in com. meo inter partes infraſcript', & eiſdem partibus diem præfixi, eſſendi coram. Juſtic. infraſcript', ad diem & locum infracontent' prout iſtud breve in ſe exigit & requirit: Quæ quidem loquela patet in quadam ſcedula huic brevi conſuta. *Aliter.*

A. B. queritur verſus C. D. de placito captionis, & injuſtæ detentionis averior. ſuorum. *Querel'.*

Plegii de proſeq' &c. (ut ſupra.)

Virtute iſtius brevis recordari feci loquelam, quæ eſt in com. meo ſine breve domini regis, inter W. H. & A. D. de averiis ipſius W. H. captis & injuſte detentis, ut dicit. Et record. illud habeo coram Juſtic. infraſcrip. ad diem & locum infracont. ſub ſigillo meo, & ſigillis A. B. C. D. E. F. & G. H. quatuor legalium militum de com. meo ex illis qui recordo ill. interfuerunt, prout patet in quadam ſcedula huic brevi annex. ſecundum exigentiam iſtius brevis, &c. *Aliter.*

Ad com. meum tent. &c. ut ſupra.

Virtute iſtius brevis mihi directi in pleno com. meo tent. apud caſtrum C. in comitat. Cantab. infraſcript. (tali die & ann.) recordari feci loquelam unde interius fit mentio; quæ quidem loquela patet in quadam ſcedula huic brevi annex. Et recordum illud habeo coram Juſtic' infraſcript. ad diem & locum infracontent. ſub ſigillo meo & ſigillis W. H. E. R. &c. quatuor proborum & legalium militum ejuſdem com. ex illis qui record. illi interfuer' & partibus infraſcript. diem illum præfixi quod ſint ibidem in loquela ill. prout juſtum fuerit proſecutur., prout interius mihi præcipitur. *Querel'. Aliter.*

Reſi-

Scedul. Reſiduum executionis iſtius brevis patet in quadam ſcedula huic brevi annex.

Querela. R. S. queritur verſus T. E. de placito captionis et injuſte detentionis averiorum ſuorum.

A. B. Armig. Vic.

Virtute hujus brevis Recordari feci loquelam qua fuit in Com. meo ſine brevi Dom. Regis inter I. W. et H. S. infraſcript. de averiis ipſius I. capt. et injuſte detent; Et eiſdem partibus diem et locum infracontent. præfixi, quod tunc ſint ibi in loquela illa, prout juſtum fuerit, proceſſurũ, prout iſtud br. in ſe exigit et requirit, Cujus quidem loquelæ recordum huic brevi eſt Conſut., &c. Liber Intr. fol. 570. d.

Qu. R. S. Queritur, &c. ibid.

Upon the Recordare, the Sheriff is firſt to Record the Suit in full Court, and then to return the ſame under his own Seal, and the Seals of four Suitors of the ſame Court. And after the Sheriff is to Summon the Defendant to be there at the day to the Return thereof. *Iſſint ceo tots foits prefix un jour in Banco al parties.* Fitz. 70. b. Finch. 122. hic cap. 114. That the Sheriff may cauſe this Writ to be openly read in the ſame Court; ſo that the parties may have notice of the day of their appearance.

Mez viens ſerra remove frq; le Pleynt, comt. que ilz ſont al iſſue. Fitz. 71. a. et 3. H. 6. fol. 39.

If the Return ſhall be ad Comitat. tentum, &c. Recordari feci loquelam quæ eſt in eodem Com. coram me; this is not good; for the Suitors are Judges there: And therefore the return muſt be, Recordare feci loquelam quæ eſt in eodem Comit. coram Sectaribus Curiæ, and not coram me. 21. H. 6. Fitz. Retor. 17.

Alſo the Schedule muſt be, Ad Comit. meum tent. (tali die et Anno) coram, ſuch and ſuch, Sectatoribus Curiæ, and not coram me.

In a Recordari de averiis, it it a good Return for the Sheriff, quod Cauſa non eſt vera. 30. E. 1. Fitz. Retor. 114.

The Sheriff upon this Writ may return Tarde. Fitz. Recordare 8.

Note that a Recordare is to remove a Suit into the Kings Court, ſc. out of the Court of Ancient Demeſn, Hundred Court, County Court, or Lords Court, upon a falſe Judgement given in any of them.

But where the falſe Judgement is given in any other Court Baron then the County or Sheriffs Court, there it is called an Accedas ad Curiam. Fitz. 4. 13. 70.

If the Plaint be removed out of the County Court by a Recordare, &c. and the Recordare beareth date before the Plaint be entred in the County Court, and the Sheriff removeth it, it is good: But if the Record be removed out of the Court of another Lord, by ſuch a Writ, bearing date before the Plaint be entred, it is not good. Fitz 71. d.

Note that in the Writ de Accedas ad Curiam, the Sheriff muſt take with him four men of the ſame County: But in this Recordare fac' loquelam, the Sheriff nèds not take any with him; But both theſe Writs muſt be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the ſame Court. Hic cap. 113. Fitz. 18. c.

Upon a Writ of Recordari fac. loquelam, directed to the Sheriff, although the Plaint or Suit be determined, yet the Sheriff is to make Execution, and Return of the Writ, ſc. to require the view of the Plea, and to Record and Return the ſame, &c. Vide Dyer. 268. Pl. 17. et Fitz. 71. a.

R d ſſeiſin. The Sheriffs duty in executing this Writ, See hic cap. 93.

CAP.

CAP. 73.

Retorne de replevin ſur Retorn. habend. Averiorum.

PLeg' de proſequend' & de retorn' inde habend', ſi retorn' inde adjudicetur, I. D. R. R. *Repleg.*

Virtute,&c. Repleg' feci infraſcripto R. averia infraſcript', prout in iſto brevi mihi præcipitur: Et ulterius infranom' domino regi certifico, quod nullum aliud breve de infraſcriptis averiis repleg' unquam præter iſtud breve mihi liberat' fuit, &c. Quære if this laſt clauſe be good: Sée hic infra 28. H. 6.

Virtute,&c. (tali die et anno) repleg' feci R. B. infranominat' averia ſua infraſpecificat', quæ infranominat. T. M. et R. S. ceperunt et injuſte detinuer. ſecundum formã hujus brevis, prout interius mihi precipitur. Et infraſcript. T. et R. attachiati ſunt per centum oves precii vj. l. per T. F. ballivum, per placitum, I. T. et R. M. Et infranominat. R. B. attachiat. eſt per dict. ballivum meum per tres vaccas precii iii. l. per pl' prædict. I. T. et R. M. Et nullum aliud mandat. ſive breve domini regis præter iſtud breve de averiis prædict. repleg. ante advent. iſtius brevis mihi unquam liber. fuit. *Aliter.*

Virtute iſtius brevis mihi directi deliberari feci infranominat. I. B. averia quæ T. M. cepit, et eidem T. M. in curia domini regis adjudicat. fuer. prout interius mihi præcipitur. *Aliter.*

A. B. Ar. Vic.

If the defendant hath return awarded him, and he ſues a Writ, de Returno habendo, and the Sheriff returns upon the plur. quod averia elongata ſunt, &c. here he ſhall have a Scire facias againſt the pledges, &c. Fitz. 74. f. et 7. R. 2. Fitz. Wither. 11.

Upon a Replevin directed to the Sheriff, it ſéemeth that he needeth not to return the Writ, untill the Pluries Replevin: But if at the Pluries he doth nothing, an attachment ſhall go out againſt the Sheriff, directed to the Coroners, &c.

Et nota que le Plt. pt. ſuer touts le brief, ſc. le Replevin, Alias, & le Pluries, tout al un temps, & poet deliver ex al vic. come a luy ſemble bon. Fitz. 68. c.

It ſeemeth that the Writ de Returno habendo, is not returnable. Fitz. Replev. 3.

Alſo note that the Sheriff before he maketh deliverance of any diſtreſs, &c. muſt not only receive of the Plaintiffs pledges de Proſequendo, but alſo pledges for the return of the beaſts, if the return be awarded. And if the Sheriff taketh inſufficient pledges de Retorno habendo, they are as no pledges: And he ſhall anſwer the price of the beaſts, &c. ſc. a Writ of Detinue lyeth againſt the Sheriff who made the Replevin. Vide Br. Detinue. 6. & hic c. 114.

Virtute,&c. domino Regi certifico, quod poſt receptionem hujus brevis, *Plur. Repl.*

per totam ballivam meam diligenter inquiſivi, & nullo modo mihi conſtare poteſt, quod aliqua averia infranominat. W.P. capt. fuer. & injuſte detenta per infranominat. I.N. prout in breve ſupponit. Ita quod executio iſtius brevis ſecundum tenorem et effectum ejuſdem per me fieri non potuit, prout interius mihi præcipitur: Et ulterius domino regi certifico quod nullum aliud breve de plur. repleg. præter iſtud breve mihi unquam deliberat. fuit. (quere de hoc, & vide. 5. H. 7. 27. hic poſtea.)

In a Replevin the Sheriff returned (at the plur.) q; nullus venit ex parte quer' ad demonſtrand' ſibi averia: And he returned further quod nulla alia brevia inde ad ſuas manus devenerunt; And it was holden an ill return, and the Sheriff was thereforе amerced; for it is a contempt in the Sheriff if one Writ comes to him, and he returns quod nulla alia brevia, &c. 28. H. 6. Br. 9. Fitz. Ret. 20. Vide Dyer 189. *tiel Retorne.* 28. H. 6.

Upon the Pluries Repleg. the Sheriff returned, that he could not make deliverance, &c. for that the defendants claimed property therein, and thereupon a Writ de proprietate probanda was granted out to the Sheriff, aſſumptis ſecum cuſtod. placitorum coron. &c. commanding him to make deliverance to the Plaintiff, if it be found for him: And upon the property found for the Plaintiff, then alſo (if the plaintiff ſhall finde pledges de Proſequendo) the Sheriff ought to attach the defendants, ad reſpondendum tam Domino Regi de contemptu, quam querenti de dampnis, &c. Regiſt. 83, 87. Dyer 172, 173. Br. Propr. probanda. 1. 32, 40. & 49. Fitz. Repl. 12.

Mes nota que le tryall del property in le County per bre. de proprietate probanda neſt que enqueſt de office, & poet eſtre travers & trie arere, &c. Br. propriet. prob. 49. 1. E. 4.

Alſo before the enquiry of the property be made by the Sheriff in his County Court, the Sheriff is to give warning or notice thereof to the defendants, to the end he may be preſent if he will. Regiſt. 83. 85.

And beſides, the Sheriff muſt give warning thereof to the Plaintiff to be there to give in his evidence. 1. E. 4. 9.

Ante adventum iſtius brevis, Averia & catalla infranom' K. quæ W.C. cepit et injuſte detenuit, ut dicitur, Elongata fuerunt per prædict. W. C. Ideo præfat' K. averia & catalla ſua prædict. Repleg' non poſſum, &c. Averia elongat.

Nullum breve de averiis infraſcript' repl' præter iſtud mihi unquam liberat' fuit. Et ulterius domino Regi certifico, quod ante advent' iſtius brevis averia prædict' elongat' fuerunt, & ad loca mihi ignota tranſmiſſa per infranom' I. T. Ita q; ea infraſcript' W. nullo modo repl' poſſum, prout interius mihi præcipitur. Aliter. Dyer. 188.

Ante adventum, &c. averia infraſcripta per infranom' T. C. elongata fuer' ad loca mihi incognita; Ita quod viſum eorund' infranominat' A. H. et T. C. retornand' habere non potui, prout interius mihi præcipitur. Aliter ſur 1. deliverance.

Virtute, &c. domino Regi in Cancell. ſua certif. q; averia et catall. per infranom. A. B. prius capt. elongata ſunt ex com. infraſc. ad loca mihi incognita, per infraſc. T. R. Quo averia et catall. pred. infraſc. R. retorn. non poſſum, prout interius mihi præcipitur. Aliter in Cancel.

Ante adventum iſtius brevis, averia infraſpecificat: elongata fuerunt per infranom. I. M. ad loca mihi incognita, ſic quod averia illa infraſcript. N. M. retorn. non poſſum, juxta formam hujus brevis. Aliter ſur 1. deliverance.

Upon

Upon a Pluries Repleg. out of the Chancery, returnable in Banco, the Sheriffs of London returned that they ought to make Replevy, by their cuſtom, upon a Plaint in their Sheriffs Court, and not by Writ out of the Chancery; and this return was holden to be inſufficient (by all the Juſtices) and another Pluries Repleg. was awarded to the new Sheriffs, and proces of contempt to attach the old Sheriffs. Dyer 245, 246.

Retorn. præcepti ſur ſecond. deliverance in Com.

PLeg. de proſeq. & de retor. habend, &c. I. D. R. R.
Virtute, &c. ego W. A. unus ball. infran. petii de I. T. & R. N. infraſc. deliberation. de averiis T. B. infraſcript. viz. de tribus bobus precii cujuſlibet bovis xx. s. & duobus equis precii cujuſlibet equi xx. s. & renuere inde facere deliberationem, & prædict. averia elongata ſunt ad loca mihi ignota, per q. inde deliberation. facere non potui, prout interius mihi precipitur. Et pred. T. I. attach. eſt per unam crateram argenti, ad valenc. xx. s. *Replevin.*

In Repleg. le plt. fait Nonſu. per que le def. aver bre. de Returno Habendo, Et ſur le Retorno Habendo, le vic. retorne que le Plt. aver eſloigne les avers, per que, &c. Ceo eſt bon retorne. Dyer 41. & 59. Fitz. 74. f.

Mes ſi le bre. de Returno Habendo ſoit agard al vic. apres Second Deliverance preie per le Plt. le vic. nad power de ſerver le Returno Habendo, mes le Second Deliverance. Dyer ibid. *C. nota que le Second Deliverance eſt un Superſedeas de le bre. de Returno Habendo, & cloſe le mains del vic. iſſint q. il n'ad authority de faire aſcun Retorne ſur le bre. de Returno Habendo.* Dyer 41.

Si le vic. ſur le ſecond deliverance livera les beaſts al Plt. Et ne retorne le bre. iſſint que le def. ne pt. aver Retorne, il avera ſon remedy vers le vic. 8. R. 2. Br. Second deliverance 12.

Where the Sheriff taketh inſufficient pledges, de returno habendo, they are as no pledges, Br. 2. *Retorn. des Avers.*

If a man hath a return adjudged for him, this is no ſatisfaction for the thing for which it is awarded; but the defendant ſhall retain this as a pledge or gage until he be ſatisfied: But he hath not any property therein, ſo that if afterwards ſufficient amends ſhall be tendred to him, he ought to accept thereof; otherwiſe the plaintiff ſhall have a Writ of Detinue: Br. 6. 17.

Br. 11. *Nota ou le tenant offer le rent, ou amercement*, tempore diſtrictionis factæ, *ou apres le diſtreſſe priſe, & le ſigneur refuſe, il navera Returne.*

Fitz. 68. f. If the Sheriff, upon the Repl. Sicut alias, or plur. ſhall return that he hath ſent to the bayliff of the Franchiſe, &c. who hath made no return to him; or that he will make no deliverance, &c. Then the plaintiff may have a Non omittas to the Sheriff, commanding him to enter the Franchiſe, and to make return: And if then the Sheriff ſhall not do this, the plaintiff ſhall have an alias, and plur. &c. to the Sheriff:
Fitz. 68. f. And yet it ſeemeth that theſe returns, ſc. q; mandavi ballivo libertatis, &c. qui mihi nullũ dedit reſponſ. or that the bayliff will make no deliverance,

verance, &c. are no good returns: for by the Stat. of Weſt. 1. c. 17. it appeareth that the Sheriff, upon ſuch returns made to him by his Bayliff, ought preſently to enter into the Franchiſe himſelf, and to make deliverance of the goods taken, &c. See the Stat. 52. Hen. 3. cap. 21. 3. E. 1. c. 17.

Note that there be divers manners of cauſes, which the Sheriff may return upon the pluries, for which he cannot make Replevy or deliverance: ſee the Regiſter, et Fitz. 73. g.

Alſo note that upon theſe returns following made by the Sheriff, the plaintiff ſhall have a Capias in Withernam, directed to the Sheriff to take ſo many of the cattel of the defendant, &c. ſc. if the Sheriff upon the Plur. ſhall return, Fitz. 68 g. Withernam.

1. Quod pred. B. averia pred. A. cepit & ea fugavit, de com. pred. in com' S. per q; eidem A. Repl' non potuit, &c.

2. Quod mandavit ballivo libertatis, de R. cui retor' brevium, &c. qui reſpondit q; averia elongata ſunt, &c. per q; non poteſt habere viſum eorum; *Nec de faire deliverance.* Fitz. 68. g. Vide Fitz. 69. b. & 74. a.

3. That he himſelf cannot have the view of the beaſts to make deliverance.

But in this former caſe it ſeemeth the return muſt be further, ſc. Quod acceſſi ad locum, et viſum habere non potui; For otherwiſe it may be that he could not have the view of the cattel, for that he came not where the cattel were. 2. E. 3. Fitz. Ret. 76.

And yet if the cattel be driven into a Fort or Caſtle, the Sheriff may return quod averia elongata ſunt. Finch. 354.

4. That after the taking, &c. the defendant hath eſſoigned (or conveyed away) the cattel out of the bayliwick, whereby he cannot make deliverance.

5. That the defendant hath eſſoigned the cattel to places unknown, by reaſon whereof he cannot have view of the cattel to make deliverance.

6. Quod mandavit ballivo libertatis, &c. who anſwereth that the defendant hath impaſked the cattel within the Rectory of the Church of C. ſo as he cannot make deliverance, &c.

In a Repl' it is a good return for the Sheriff to ſay, that the defendant (or his Bayliff, or ſervant, quære) claimeth property in the goods, &c. Sed nota *que ſi le defendant in Repleg. clayme propertie fauxment, & iſſint trove* in proprietate probanda, *il ſerra fine, & impriſon*: Co. 8. 60. a. Fitz. proprietate probanda. 1. plus hic c. 114. Br. 46. 108.

And note that a man cannot claim property by his bayliff or ſervant, for that if the claim be found to be falſe, the Lord or Mayor cannot be fined and impriſoned. Vide Fitz. propriet. proband. 6. & Br. Retor. 108. et Co. L. f. 145. b.

In a Repl. it is no good return to ſay that there are no ſuch cattel or goods found within his bayliwick. Br. 89. 5. H. 7. 27. Fitz. Ret. 116.

But the Sheriff may and ought in ſuch caſe, to return, Quod averia ſunt elongata, 5. H. 7. 27. Br.

The Sheriff returneth that the defendant took the cattel as bayliff of ſuch a Town, for the Kings debt, and ſold them, &c. Or returneth that the defendant delivered the cattel to another in execution by force of a recovery; theſe are no good returns, but the Sheriff muſt make his uſual return. Fitz. propriet. probanda. 5.

Alſo

Alſo the Sheriff may return, Quod nullus venit ex parte querentis ad demonſtrand. ſibi averia: Br. 9. 89. Kiel. 119.

Br. offic. 10. Br. retor. 104. The officer which maketh or ſerveth a Replevin, needs not to ſerve it, but only of ſuch cattel, &c. as the Plaintiff in the Replevin ſhall ſhew unto him: And yet the officer ought to take notice what and whoſe cattel, &c. they be, which he ſhall replevy at his peril. Vide Kiel. 119. pro et contra. & Fitz. Barr. 191. et Treſp. 243.

But yet by ſome opinions, if in a Replevy the plaintiff doth ſhew to the Sheriff the beaſts of a ſtranger, and the Sheriff delivereth them, the Sheriff is no treſpaſſor herein; for the Sheriff is not bound to make Replevy, but by the ſhewing of the Plaintiff (and then the default is in the Plaintiff, and not in the Sheriff.) And again the Sheriff cannot by common reaſon take knowledge which are the beaſts or catrel of the Plaintiff, and which are not. Kiel. 129. vide hic c. 22. & 30. other like caſes.

20. E. 4. 11. Br. 100. The Sheriff returns, Quod averia elongata ſunt ad loca incognita; this is a good return: but if the return be, ad loca incognita infra com. meum, the Sheriff ſhall be amerced for ſuch a return; for he is to take notice of them, if they be within his County.

Br. 125. In a Repl. at the Pluries, the Sheriff returned that the cattel are dead, and it was holden to be a good return.

Br. 125. If he which is diſtrained, take his cattel again, and yet ſueth a Replevy, the Sheriff may return the ſpecial matter.

If the Sheriff returneth that the cattel are in a Fort, Caſtle, or Park, &c. ſo that he could not make deliverance, this is not good. hic c. 36.

CAP. 74.

Retorna brevis de reſtitution.

VIrtute iſtius brevis mihi direct. (tali die & anno, &c. infraſcript.) tenementum infraſcr. cum pertin. reſeiſivi; & infranominat. T. et H. plenam poſſeſſionem et ſeiſinam inde reſtitui, prout interius mihi præcipitur. *Reſtitut.*

See hic antea, habere fac. ſeiſinam, et habere fac. poſſ.

Retorna brevis de bonis Reſtituendis apres exigent. Vide hic cap. 59.

Retorna de Reſummon.

EXecutio iſtius brevis patet in quadam ſcedula huic brevi annex. *Reſummo.*

A. B. Ar' Vic.

Nomina Jur. xxiiij. Milit. unde in brevi huic ſcedulæ annex. fit mentio:

R. M. de N. Ar.

T. B. de M. Ar. &c. (ad numerum xxiiij.)

Quilibet Jur. pred. ſeparatim Reſum. eſt per H. R. et M. N. bonos ſummon.

A. B. Ar. Vic.

Sanctuarit. Ante adventum iſtius brevis mihi direct. I. S. infranominat. intravit ſanctuarium ſancti *Petri* Weſtm. in com. Midd. & eodem com. adhuc moratur, per quod corpus prædict. I. S. coram Juſtic. infraſcript. ad diem et locum interius ſpecificat. habere non poſſum prout, &c.

Upon a Capias, the Sheriff returned that the party was Verger in the Church of Sarum, and abode within the precinct of the Church, and being a ſanctuary, he therefore returned, Non eſt inventus, and it was holden to be no good return, for that he might have ſerved this proceſs in the Church. 6. H. 4. f. 3.

CAP. 75.

Retorne de Scire Facias.

A Scire fac. is a Writ judicial, and is uſually to warn a man to come and ſhew cauſe to the Court, why execution of a judgement which is paſt, ſhould not be done. Na. bre. 163, 164.

And the Sheriff upon this Writ, is only to warn the party to appear (before the Juſtices) &c. according to the Writ, and then to return the ſame. Ibid.

Scire facias. Virtute iſtius brevis mihi directi, per A. B. et C. D. probos et legales homines de balliva mea, Scire feci infranominat. I. S. quod ſit coram Juſtic. domini Regis, (vel coram domino Rege, vel coram Baron. domini Regis) ad diem et locum infraſcript. ad oſtend. et proponend. ſi quid pro ſe habeat, vel dicere ſciat, quare, &c. (according to the matter contained in the Writ,) prout mihi interius præcipitur. Scire feci. Com. Banco. Banco Regis. Eſchequer.

Note that in a Scire fac. to execute a recovery, the garniſhment ought to be upon the land. 22. H. 6. 38.

Garniſhment veigne del French pred. Garnir. id eſt, to furniſh. *Come ſi action de detinue de chres. ſoit prout envers un, & le def. plead q. les Charters fuer deliver a luy per le plt, & per un anter, ſur certen conditions, & preia q l'auter pt. ee. Garny* (ſc. warned) *de plead ove le plt. ſi le condition ſoit performe ou ney. & ſes ceo le bre. de Scire fac. iſſer vers luy, & ce. e. appell Garniſhment; & l'auter qt. il veigne pleader ove le plt. & ce e. appell enterpleader*, Minſh.

Note

a Vel Juſtic. noſtris.
b Vel coram Nobis.

Note that the appearance Corâ { Juſtic. Domi. Regis, a / Domino Rege, b. / Baron. Domini Regis, / Domino Rege, in Cancellaria, / Nobis, et cõſilio noſtro. } is in { The Court of C. Pleas. / The Kings Bench. / The Exchequer. / The Chancery. / The Star-Chamber. }

Retorn' de Nihil, ſuper Scire fac.

Nihil. INfranominatus A. B Nihil habet in balliva mea per quod ei Scire facere poſſum, neque eſt inventus in eadem.

A. B. Ar. Vic.

Aliter A. D. & ceteri deff. infranom. Nihil habent in balliva mea per quod eis Scire facere poſſum. Liber. Intr. fol. 591. a.

Upon a Scire fac. againſt the garniſh, the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec eſt inventus. 1. H. 5. Fitz. Ret. 38. Lib. Intr. 591.

In a Scire fac. the Sheriff hath nothing to do but only to warn the party (hic c. 55.) and this ſeemeth properly to be called garniſhment.

Fitz. Ret. 83. By the Scire fac. the Sheriff uſually is commanded to give knowledge to the defendant, that he appear at ſuch a mans ſuit in ſuch a Court, at a certain day, there to do that which the Writ requireth, &c.

And in a Scire fac. the Sheriff returned Scire feci A. ad eſſendum coram Juſtic. apud Weſtm. ſecundum tenorem brevis: and for that he did not ſay, ad faciendum prout iſtud breve requirit, he was amerced. 15. E. 3. Fitz. Retorn. 108. & 119. For the Sheriff was to warn the party ad eſſendum, & faciendum quod breve requirit; And that garniſhment alſo muſt be by (or in the preſence of) two others, and muſt be ſo returned, ſc. Scire feci A. per I. D. & I. C. probos & legales homines, &c. ut ſupra. Vide Fitz. Retorn. 67, 77, 80, 115, 119. & hic cap. 31.

But the Sheriff needs not to name or ſhew in what Court the party is to appear, as it ſeemeth by the book. 16. E. 3. Fitz. Ret. 78. tamen quere.

Where tenant for life prayeth in aide of him in reverſion, in a Scire fac. againſt him, the Sheriff may return, that he was garniſhed in the land in reverſion, which is terra petita. 45. E. 3. 26.

In a Scire fac. the Sheriff may garniſh the party, by his perſon, or by his lands or goods as it ſeemeth. 32. H. 6. 13. Kitch. Ret. 54.

Sur appat. Virtute, &c. Scire feci infranominat' I. S. & I. D. quod ſint coram Juſtic' domini regis infraſcript', ad diem et locum infracontent', ad reſpondend' R. H. infranominat'.

Ad audiend. Record. Virtute, &c. Scire feci T. A. & E. uxori ejus infraſcript', (per A. B. & C. D.) quod ſint coram domino rege, ad diem infraſcript. ubicunque, &c. ad audiend' record. & proceſſum, unde iſtud breve facit mentionem; Et ulterius ad faciend. & recipiend. (omnia et ſingula) prout iſtud breve exigit.

Virtute,

Vers Exec'. Virtute, &c. ſcire feci, *W. B.* adminiſtrat' ſive executor. bonorum & catal' quæ fuer. *T. P.* infranomin. per *W. G.* & *G. K.* probos & legales homines de ball' mea, eſſendi coram domino rege, (vel Juſtic') ad diem infranom'. Neq; ſunt plures adminiſtr. aliquorum bonorum et catall' quæ fuerunt ejuſdem *T. P.* in ball' mea, quibus aut cui ad preſens ſcire facere poſſum.

Nulli ſunt executor. de *E.* infranom. neque admin. bonorum & Catallorum quæ fuerunt ejuſdem *E.* Nec hered. neque tenent. terrarum et Tenementor. quæ ſua fuer. in Balliva mea, quibus aliquo modo Scire facere poſſum: this is good.

Aliter. Virtute, &c. ſcire feci T.V. infranominat. quod ſit coram Juſt. infraſcr. ad diem et locum infracontent' per I. S. & R. G. ad faciend. ea quæ iſtud breve in ſe exigit et requirit, &c.

In Cancell'. Virtute, &c. ſcire feci W.C. militi infran. quod ſit coram domino rege in Cancellar. ſua ad diem infracontent. ubicunq; tunc fuerit in Anglia, ad oſtend. D. proponend. prout iſtud breve in ſe exigit & requirit, per I.M. & W.D. probos et legales homines ball' meæ, juxta form. hujus brevis. Co. 1. 161. 2.

Virtute brevis iſtius mihi direct. 12. die Aprilis, anno regni dicti domini regis viceſimo ſupradict. per I.B. gener. & T. W. gener. probos et legales homines de Balliva mea ſcire feci eiſdem *Tho. P.* & *Marg.* eſſend. hic modo ad hunc diem, ad informand. dictum dominum regem & conſilium ſuum, prout breve prædict. in ſe exigit et requirit, ac prout per breve illud mihi præceptum fuit.

Scire feci eidem I.S. eſſendi coram, &c. oſtenſ. in forma predicta per R. F. & T. G. probos, &c. Liber Intrac. 217, 218.

The Sheriff may return Tarde, &c. in a Scire Fac. Libr. Intr. 458. b.

In a Scire fac', It is a good return that the party is dead. Br. 125. Fitz. Retor. 69. Br. Recog. 2. Libr. Jur. 458. b. & 591. a.

In a Scire fac. to have return of Cattel after the Return awarded, the Sheriff may return that the Cattel are dead. 13. R. 2. Br. Averment 36.

In a Scire fac. againſt a Parſon of the Church, the Sheriff returneth that the Parſon had Reſigned, &c. This is good. Hic cap. 55.

In a Scire fac. againſt an Abbot, the Sheriff returned that he was Depoſed; this was a good Return; for it was as much as if he had returned him dead. 1. H. 6. 2. 2. H. 7. 10. Fitz. Retor. 1.

In a Scire fac. againſt the Husband and Wife, it is no good Return to ſay they are Divorced. See hic cap. 36.

The Sheriff returneth Scire feci heredibus & terræ tenent. without naming the Heir, or terr Tenants, by their proper names; and the Sheriff was therefore amerced. 41. E. 3. Fitz. Retor. 69.

In a Scire fac. the Sheriff returned Scire feci, A. B. infranom. per

H. H.

H. H. & T. D. without theſe wordes, Probos & legales homines, &c. Vide hic c. 36.

Upon a Scire fac. &c. the Sheriff returneth, Vobis certifico; or, Scire feci quod ſit coram vobis, &c. This word vobis, in both Caſes ſhall be referred to the Juſtices mentioned in the Writ; And yet it were better if the Return were Vobis Juſtic. infraſcriptis, &c.

In a Scire fac. to execute a Judgement, or Fine, the Sheriff ought to return the Names of the Summoners and Weyors. Br. Retor. 86.

In a Scire fac. L. B. Magiſtro aulæ de C. in Cantabr. et Scholaribus ejuſdem; the Sheriff returned, Quod Scire fecit Magiſtro, without ſaying L. B. not ſpeaking of the Scholars, and it was holden void.

In a Scire fac. E. Prioreſſe de W. the Sheriff returned, Scire feci Prioreſſe de W. without ſaying E. Prioreſſe, and it was void.

If the Sheriff ſhall return Garniſhment (in a Plea of Land) where as no Garniſhment was made, an action of Deceit lyeth againſt the Sheriff, &c. Stat. 2. E. 3. cap. 17.

In a Scire fac. againſt two, the Sheriff may not return that one of them was Garniſhed, and that the other Nihil habet, &c. For although he hath nothing, yet the Sheriff ought to have garniſhed him by his perſon. 1. H. 5. 13. Kitch. 54.

In a Scire fac. againſt two, the Sheriff returned Scire feci modo & forma prout, &c. And it was holden good, though he returned not ſeverally Scire feci. 2. H. 4. 14.

Infranom' A. D. Nihil habet in Balliva mea per quod ei Scire facere poſſum: Neque eſt inventus in eadem: this is a good Return upon a Scire fac. againſt the Garniſhed; the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec eſt inventus. 1. H. 5. Fitz. Retor. 38.

Upon a Scire fa', Two Nihils returned, Countervails Scire feci. See Br. 101.

Return de Scire fac. verſus Clericum, vide Plus hic cap. 36. & 55.

CAP.

CAP. 76.

Retorne brevis de ſeiſina.

Briefe de ſeiſin. VIrtute iſtius brevis mihi directi viceſimo die Octobris anno infraſcript', habere feci infranominato N. S. plenar. ſeiſin de & in tenement' infraſpec' cum pertinentiis, prout interius mihi præcipitur.

A. B. Armig. Vic.

Sæ plus in Retorn. de habere fac' ſeiſinam, hic fol. Et Retorn. de Seiſin in Dower.

Note that in ſuch Caſes, the party which recovereth Dower, &c. cannot enter, but muſt firſt have ſeiſin delivered to them by the Sheriff. Plo. 529. b.

And the Sheriff may put the party in poſſeſſion or ſeiſin of houſe or Land by a twig, clod, or the like.

Alſo if a man recover Rent, the Sheriff may put him in Seiſin thereof by *Parol*, or by any Parcel of the Land out of which the Rent is iſſuing, &c. Sæ hic antea Retor. de Habere fac Seiſinam. Fitz. 179. h.

In Writs of Seiſin, it is no good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Record ſuppoſeth to be Tenant. Plo. fol. 14. a.

The return of a Significavit.

Significav'. VIrtute iſtius brevis mihi directi, cepi corpus infranominat' *A. B.* cujus quidem corpus remanet in priſona domini regis caſtri ſui C. ſub ſalva cuſtod. mea, donec Sanctæ Eccleſiæ tam de contemptu quam de injur. ei illat' ab eo fuer. ſatisfact', prout iſtud breve in ſe exigit & requirit.

A. B. Armig' Vic.

The return of a Significavit *with Proclamation.*

INfranominat' *A. B.* non eſt inventus in Balliva mea, ſed virtute iſtius brevis mihi direct' in pleno comitatu meo tent. apud Caſtrum Cantab. in comitatu infraſcript. decimo quinto die *I.* anno infraſcript. publicè proclam. feci quod prædict. *A. B.* infra ſex dies proxim. poſt proclamationem illam, corpus ſuum reddat in forma infraſcript. prout breve iſtud in ſe exigit & requirit.

A. B. Armig. vic.

Secunda

Secunda Superoneratione.

13.E.cap. 8. BY the Statute 13. E. 1. upon a Writ de Secunda ſuperoneratione paſturæ; the Sheriff if preſente of the Parties being ſummoned (if they will come) ſhall inquire upon the ſecond ſurcharge, which if it be found, it ſhall be returned (before the Juſtices) under the Seal of the Sheriff, and the ſeals of the Jurors. *Secunda ſuperoneratione.*

Nota que al Common ley ſi certen Tenants uſſent ewe Common Appendt. in Common Waſt, & un des Tenants uſt miſe in le Common pluſors beaſts q. il dinſt, les autres Tenants averont Br. de Admeaſurement de paſtur, per luy admeaſur. Et ſil apres cel Admeaſurement vert, aut. foits ſurcharge le Common, les autres tenants n'avera ſurque br. de Admeaſurement, ſi com. ilz. aver. de le premier Surcharge.

Iſſint ſil uſt ſurcharge le Common xx, foits, ou plus, il n' avera greind. puniſhment q. ſil n' aver. ſurcharge ſurq; 1. foitz: Et per ceo (& al intent q. homes per lor. per de demeſme ſerra le plus toſt garn. ne de faire perde as autres) le Stat. de Weſtm. 2. cap. 8. *done remedy per ceo Br. de Secunda Superoneratione, in tiel manner.*

Si le premier Admeaſurement fuit fait deut les Juſtices, donq; (ſi cey q. un foits adeſtre iſſint admeaſure, en apres ſil aut. foits ſurcharge, de cel ſecond Surcharge) les autres Tenants que ſua le premier br. avera un br. Judicial, &c. direct. al vic. luy Commandt. q. il aler al lieu. &c. per Enquirer de cel. 2. ſurcharge: Et ſi ceo ſoit trove, le vic. Retor. ceo in le Common Place, deſouth ſon Seal, & les Seals de les Jurors.

Mes le vic. doit faire cel Enquiry in le preſence del parties, ſilz. voil vener.

Et per ceo le vic. doit Summon ou garner les parties, d'eſtre deut luy al temps de ſon enquiry; Et la ilz. averout lour challenge al Enqueſt (ſc. à les parols, ou al Array.) N. br. 73.

Mes ſi le premier Admeaſurement fuit fait in le County Court, donque apres le ſecond ſurcharge, les autres tenants que ſua le primer br. deut, avera de cel. 2. ſurcharge, un br. Original, (que iſſera hors del Chancery) & ceo br. auxi commander le vic de aler in perſon al liew, &c. pro Enquirer de ceo ſecond ſuperoneration, & des avers miſe in le Common ou paſter, ouſter le due Nomber que il doit de droit aver. ou per le value del ex.

Et icy le vic. ſerra charge (al fine del Ann. in le Eſcheq. ſur ſon Accompt, &c.) cer ceo br. Original ſera inroll, & le tranſcript ſera miſe in le Exchequer, &c.

Mes ſur cel Enquiry fuit ſur br. Original (que n'eſt q. un Commiſſion al vic.) les parties ne ſerra mye garnies ou Summon, ſicom. ilz. ſera qu. le br. eſt Judicial.

Nota ou le Statute voet, Si le (premier) admeaſurementi fuit fait deut les Juſtices, &c. Ceo eſt d'eſtre intend, quant. le br. Admeaſurement eſt remove hors del County en Common Bank, per un Pone, cer il eſt un br. vicountiel & met Retornable, &c.

Et ou le Stat. voet, ſi tiel Admeaſurement ſt. ſt. in le County, &c. ceo eſt lon il neſt pas Remove, mez demur la: Et ceo ſera determin la.

Mes ſi le br. ne ſont remove, mes demer in le County, la le Tenant ne pt. pleder Joyntenancy, Ne pt. voucher a garr. Ne avera le view, ou autres tiels advang.

And

And, note that by the form of the Writ de Secunda Superoneratione, the Sheriff in both Cases ought in proper person to go to the pasture or ground surcharged. Fitz. 126. e.

But yet if he cometh to the place, &c. and then causeth the Jury to see the same, and to see the Number of the Cattel of the Defendant which are put therein, it seemeth he may make his Enquiry elsewhere.

Also if upon such Enquiry it be found against the Defendant, he in both Cases shall not only yield damages to the other parties, but also shall forfeit to the King all the Cattel which he put into the Common or Pasture, above his due Number (after Admeasurement once made;) And the Sheriff upon his Accompt shall be examined upon his Oath, how many Cattel of the Defendant be found in the Pasture above the due Number; and shall be charged to answer them, or their price to the King. Stat. Westm. 2. cap. 8. Fitz. 326. &c.

And so in this Writ de Secunda Superoneratione, whither it be Judicial, or Original (ut supra,) this order is to be observed by the Sheriff, sc. when he hath assembled the xii. men (or Jury,) the parties are to shew and deliver their evidence and proofs, and according as the Jury shall finde, so shall be done.

And there shall be Indentures made of their Enquiry, and the Seals of the Sheriff and of the Jurors shall be put thereto (as to other Enquiries.) And this the Sheriff shall Return before the Justices.

Nota que le value de tiel Cattel ove qx. le Pasture fuit surcharge, sera Estreate in le Eschequer, per les Justic. si fuit dent eux.

And the Sheriff may remove or drive away from off the ground, the Cattel so surcharging; and may seize them for the King as forfeit, and so keep or sell them, and answer the price.

CAP.

CAP. 77.

Retorn' Brevis orig. in transgress. si defend. sit insufficiens.

Pleg. de prosequend' { *J. D.* / *R. R.* } *Tresp.*

And this return the Plaints. Atturney useth to make. See hic cap. 56.

Infranominat. *H. B.* & *C. D.* nihil habent in balliva mea per quod attach. (vel distring.) possunt, (or poteſt, if it be but againſt one defendant.)

And if there be moe defendants then two, then you muſt name but one, & cæteri defend. infranominat. nihil habent in balliva mea per quod attach. poſſunt.

In treſpaſſe, Nihil habet &c. is a good return, without saying, nec habuit poſt receptionem brevis; or nec habuit die quo, &c. Fitz. Retor. 30.

But if the Defendant be ſufficient, then the Return may be thus:

Pleg. de proſequendo { *J. D.* / *R. R.* }

vel ſic. Infranom. *H. B.* (the Defendant) attachiat eſt per Pleg. { *A. C.* / *B. H.* }

Aliter. Infranominat. *H. B.* attachiatus eſt per unum bovem præcii xx. s. Car le Attachment poet eſtre per Pledg. ou per Biens. Vide hic cap. 51.

In Treſpaſſe (ſc. Capias agard) The Sheriff returns, Cepi Corpus. Fitz. Retorn. 71. & Attorn. 9. 10. & 54.

Retorn' brevis ad Inquirend. de dampnis in transgreſs.

Executio iſtius brevis patet in quadam inquiſitione huic brevi annex'

certebr. INquiſitio, &c. qui dicunt ſuper ſacramentum ſuum quod *W. B.* in dicto brevi nominat' ſuſtinuit dampna occaſione tranſgr. in eodem brevi ſpec' ad xx. s. & pro miſis & cuſtagiis ſuis per ipſum circa ſectam ſuam in illa parte apponit' xx. s. In cujus rei teſtimonium, &c.

Aliter. Executio iſtius brevis patet in quadam Inquiſitione huic brevi annex.

A. B. Armig. Vic.

Inquiſitio, &c. Qui dicunt ſuper Sacramentum ſuum, quod *W. B.* & *A.* uxor ejus, in dicto breve nominat ſuſtinuer dampna occaſione tranſgreſs. in eodem breve ſpecificat, ultra miſſas at Cuſtagia ſuas per ipſos circa ſectam ſuam in hac parta oppoit. ad x. s. Et pro miſis & Cuſtag. illis ad vj. s. 8. d. In cujus rei teſtimon, &c.

In this writ to enquire of Damages in an Action of Treſpaſſe, the Jury may not, nor cannot find, that no Treſpaſs is done: Neither may the Sheriff make ſuch a return. Paſch. 7. Ed. 6.

But if the Jury will finde no Damages, the Sheriff may make his retorn accordingly. Sæ hic Cap. 36.

CAP. 78.

Retorn' de venditione Exponas.

LE vic retorne ſur un fieri fac'. Quod cepit de bonis le deff. certen biez ad valenc', &c. ad quod non invenit Emptores, Sr que iſſuit un venditione Exponas retor̄, &c. a quel jor̄ le vic' retorne Quod bona non fuer. capta p ipſu' nunc vicecom: Sed per quendam *T. S.* nuper vicecom. predeceſſorem, &c. Ideo bona illa venditioni exponere non potuit; this is a good return: Et ſur ceo breve fuit agard a diſtr. nuper vicecom': ita quod bona illa vendition' exponat, et denarios inde provenientes deliberar̄ fac' prefato nunc vicecom', quod ipſe vic' denarios hic Cor̄ Juſtic' habere poſſit, &c. ad reddend' prefato querenti debita, &c. 32. H. 6. Fitz. proces. 99.

Et nota q̄ le aunc' vic' poet vendr̄ les biez. in ceo caſe. Vide hic Cap. 2. *Ayers* Caſe.

Retorn' de Venire fac'. Deff.

Venire fac' deff. Infranominat̄ *I. B.* nihil habet in balliva mea per quod poteſt attachiari; vel ubi eum Sumon' poſſum. Nihil.

For upon the venire fac' if the Defendant be ſufficient, the Sheriff may return him Summoned, or Attached.

Note that the Sheriff upon the venire fac. jurat. muſt make and indorſe his Return, together with his Name, &c. in ſuch manner as is here before ſet down. Co. 5. 41.

He muſt alſo retorn 24. Co. 5. 36, 37. Becauſe ſome may make default, and ſome may be challenged, &c.

If any of the Jurors be miſnamed either in Chriſtian or Sirname, it is Erronious. Co. 42. 53.

Virtute iſtius brevis mihi directi venire feci coram domino rege apud Weſtmonaſt. ad diem infracontent' *I. B.* ſicut interius mihi præcipitur.

Alias. Infranom̄ *I. S.* Attachiat̄ eſt eſſend. cor̄ Juſtic. infraſcr' (tali die, &c.) ad certificandum ſecundum formam hujus brevis p ptin' *P. R.* & *I. W.*

Alias. Infranom. *I. S.* attach' eſt per Pleg. viz. { *Ri. Den.* / *Jo. Fen.*

Nota ſur ceo, ſi le defendant ſoit retorne Nihil al primes, donque iſſer Capias, Alias, Pluries, & Exigent.

Mes ſi le defendant ſoit retorne ſufficient, & fait default, donque un Diſtringas *ſerra agard.*

Retorn de Venire fac Jurator.

Venire fac' Jurator. Executio iſtius brevis patet in quadam pannella (or in quodam panello) huic brevi annex'.

A. B. Armig. vic.

Nomin'. Jurator̄ inter *A. B.* quærent', et *C. D.* defend. in placito tranſgreſſionis.

Then

Then write down the names of twentie foure Jurors thus,

A. W. de E. generꝰ
F. C. de W. yeoman. } et sic ad numerum 24.

Quilibet Juratorꝰ prædict. per se separatim { *I. D.*
Manucaptus, or attachiatus est per pleg. { *R. R.*

A. B. Armig. Vic.

Note that the Sheriff shall return no Juror without some true and certain Addition. Hic cap. 85.

He shall not return the same which had passed in a former Enquest for the same cause. Fitz. Chall. 1.

37. H. 6. f. 12. Where the parties shall admit a Viſne, although there be none such, the Sheriff cannot return that there is none such, but shall make his panell de corpore comitatus. Vide plus Co. L. 125. b. & scribe hic.

And yet in an appeal, the Sheriff returneth Juꝰ de Visner de D. and the new Sheriff returned upon the Distr. that there is no such Viſne, and it was holden that he might so do. 3. H. 6. fol. 58. Br. Retorꝰ 5.

K. Retor. 19. Hic cap. 90. Note that in a Venire facias Juratorꝰ no issues shall be returned; but otherwise in a Distring', and Habeas corpor', And yet if upon a Distring' Juratorꝰ the Sheriff shall return no issues, and a full Jurie shall appear, it seemeth to be no error. Sæ hic postea Issues upon Jurors.

Upon a Venire facias 12. liberos, &c. the Sheriff returned Venire feci, & non executio istius brevis: And also he returned but twelve (whereas he should have returned four and twenty) although the writ be 12. liberos, &c. and also he returned the Names of the Jurors upon the back of the writ, and not in a schedule, as the course is; and for these causes, he was caused to amend the same. 2. H. 7. 8. Br. 84. Fitz. Retorꝰ. 34.

Retorn' de Hebeas Corpor' Jurator.

Executio istius brevis patet in quodam panello huic brevi consut', vel annex'. *Hab. corp' Jurat.*

Nomina Juratorꝰ inter *A. B.* quærent', et *C. D.* defend. in placito debiti, &c.
Then write down the names of the Jurors thus,

A. B. de S. generꝰ
C. D. de F. genꝰ, &c. } et sic ad numerum 24.

Quilibet Juratorꝰ prædict. per se separatim { *I. D.*
Attach. or manucapt' est per { *R. R.*

Exitus eorū cujuslibet ---- x s. (or more according to the Statutes.)

Note that upon the Return of this writ, the Sheriff is to return issues upon every person.

Ceo breve de Habeas Corpora Juꝰ. *gist quant un Jury, en ascun de eit refuse de vener sur la* Venire facia', *&c. Sc. ms del Ley car por ceo qe a le primer Summons de les 24. Jurors, la est ul punishment inflict sur eux silz ne*

veigne, ilz raro aut nunquam *appeart ſur le primer brief; Et ſur lour default un* Habeas Corpus, *ou* Diſtringas *iſſer al vic. &c. Ba. V.* 24.

In this Writ of Habeas Corpora; no more than 2 Manucaptors are to be returned. In a Decem, or Octo tales, there ought or need to be returned no Manucaptors; And yet theſe things are uſed in divers places, but are void. Kit. Ret. breviũ fol. 20. & viel Retor̃ bre. 141.

Note that upon a Habeas Corpor̃ Jur̃, the Sheriff ought to return them attached, and not to return quod habet corpora eorum. 2. H. 7. Br. 84. Fitz. Retor̃. 34.

Return' de Diſtring' Jurator'.

Diſtring' Jur' Executio iſtius brevis patet in quodam panello huic brevi annex'.

And then return or ſet down the names of the Jurors, ut ſupra.

Manucaptores Jurat' præd. & eorum cujuſlibet. { *I. D.* *R. R.*

Exitus eorum cujuſlibet ----- x. s. (or more according to the Statutes) it ſeemeth alſo the Sheriff ought to return Pledges of the Manucaptors.

A. B. Armig. Vic.

Upon the Diſtring' Jurat' the Sheriff ought to return the names of the Manucaptors of the Jurors, ut ſupra Br. Retor̃. 86.

Alſo in a Diſtring' Jurat' per omnes terras, &c. the Sheriff ought to return iſſues ut ſupra, &c. 2. H. 7. 8. Fitz. Retor̃ 34.

Upon the Diſtring' Jurat' where there were Knights and Eſquires, &c. and the Sheriff returned but viij. d. upon every Juror, and was therefore amerced. 2. R. 3. fol. 13.

Upon the Diſtring' Jurator̃ if the Sheriff returneth too ſmall iſſues, he is puniſhable by the Stat. of Weſtm. 2. ſee hic cap. 89. & 90. where theſe iſſues are ſet down in certain by later Statutes.

But note that in the firſt Venire fac' Jurat', it is not material nor good to ſet down Manucaptors, for that by ſuch mainepriſe, you ſhall cauſe the Jurors to loſe iſſues, which is not required at the firſt time. K. Ret' 20.

Upon the Diſtring' Jurator̃: the Sheriff returned Manucaptores Jurator̃) but not the Pledges of the Manucaptors, and it was holden to be inſuffic. 3. H. 7. 14. Fitz. Amend 5.

Which then muſt be in this manner as it ſeemeth, ſc.

Quilibet Manucaptorũ pd̃ attachiatus eſt p Pleg' *I. D. & R. R.*

So that upon the Diſtring' Jurator̃ the Sheriff muſt return the Names of the Manucaptors of the Jurors, and alſo he muſt return iſſues upon the Jurors, and alſo he muſt return Pledges, and the Names of the Pledges of the Manucaptors, otherwiſe the proces is not ſerved. Br. Retor̃ 86. Fitz. Amend 5.

At the Diſtringas Jur̃ the Sheriff returned Nichil habet upon one of the Jurors, and was therefore amerced. Fitz. Retor̃ 13.

At the Diſtring' the Sheriff returned, that as to ſome of the Jurors the writ was ſerved by him, and as to the reſt mandavi ballivo libertatis, &c. and was therefore amerced; for that the Writ could not be ſerved by 2. Miniſters. Fitz. Retor̃ 14. hic cap. 39.

Et

Et ceo Diſtring' Jurat' *iſſera perpetualment, tanq; ilz appeare, & pour ceo eſt dit Diſtreſs infinita.* Fitz. 59. b. Regiſt. Indic. 77. b.

2. H. 7. 8. Br. 84. In a Venire fac' the Sheriff returned the names of twelve only, and on the back of the Writ, and not in a ſchedule as the uſe is; Alſo he returned Venire feci, and not Executio iſtius brevis, &c. And it was agreed by all the Juſtices of both Benches, that they would not change the ancient courſe, for the miſchief which might follow thereon; for if twelve onely ſhall be returned, no man ſhall have a Jury without a Tales, if any be challenged; and therefore they cauſed the Sheriff to amend his return, upon pain of amerciament, and yet the Writ is, Venire facias 12. liberos & legales homines, &c.

Co. 5 36. & 37. *Sur le* Venire facias *forſque* 12 *ſont retorne, & 12 de eux appeare, & done lour verdict, ceo eſt error, uncore ceo eſt remedie per les ſtatutes de Jeofailes*, ſcz. de 32. H. 8. & 18. Eliz.

Co. 8. 162. & 163. *Mes ſi ſur le* Venire facias *nul retorne eſt indorſe; ou que le vicont ne mit ſon noſme al retorne del Jurie; ou quele retorne del Jurie eſt per le Coroner, ou doit eſtre per le vicont; ou econverſo: ceux caſes ne ſont remedie per aſcun ſtatute de Jeofailes, mes remaine nient amendable.*

20. E 4. 11. Br. 114. Upon a Habeas corpor Juratorum, or Diſtring' Jurator. the Sheriff may return that ſome of them are dead, and it is good: And if a Diſtr', or Decem tales, ſhall go out, the Sheriff may return that others of them are dead, and ſo upon every Writ.

And note that the Sheriff upon the Habeas Corpora Juratorꝝ, or upon the Diſtringas Jurator. ought to return the names of all that where in the Venire fac' 22. H. 6. fol. 45. et 37. H. 6. fol. 12. Kitch. retorn. 45.

Alſo upon the Habeas Corpora Jurat. As alſo upon the Diſtring. Jurat' the Sheriff muſt return reaſonable iſſues, which iſſues are now by ſtatutes ſet down in more certain. See hic cap. 90. 91.

The Sheriff may return Tarde, upon the Diſtring' Jurat': and upon the Decem Tales, and then the Jury ſhall loſe no iſſues, quod Nota K. 20. Fit. Retorn. 37. *Tarde.*

As thus; Quoad diſtringend I.M. & alios Juratores infraſcript', eſſend coram Juſticiariis, &c. die et loco infraſcript', vobis ſignifico, quod iſtud breve adeo Tarde mihi liberat' fuit, quod illud propter temporis brevitatem exequi non poſſum ad præſens, Sed de novo apoſui decem tales, vel octo tales, ut prox. ſequent'.) prout in iſto brevi mihi precipitur, &c. A.B.C.D.E.F. &c.

Sed quoad decem tam milites quam alios probos & legales homines de viſnetto infra content' inter Juratorꝝ infracontent' ponend, Executio iſtius brevis patet in quadam ſcedula huic brevi conſut', &c.

Quoad diſtringend. R. L. & omnes alios Jurat' infraſcript' eſſendi coram Juſtic' infraſcriptis, ad diem & locum infracontent', Iſtud breve adeo tarde mihi deliberat. fuit, quod propter temporis brevitatem executionem inde facere non potui: Sed quoad apponend Decem Tales executio inde patet in quodam Panello huic brevi conſut'. *Aliter.*

Retorꝝ de habere fac. viſum. Vide hic antea fol. *View.*

Thel. 386. Where a man (by his Writ) demands a Carue of land, the moietie thereof may be put in view, and good. 6. E. 3. fol.

11. E. 3. F. Dower 63. Where a man demands a houſe, and ten ſhillings rent, if nothing be put in view but the houſe, it is not good. 5. E. 3.

If a man demands a Manor, and the tenements put in view are but a houſe, and a Carue of land of another name than the Land is, it is not good. 6. E. 3. Fitz. Brief. 727.

Although

Although there be more put in view, than is demanded, yet it ſæmeth good. 18. E. 3. 22. Fitz. Brief. 357. but quære, for the contrary is holden, 19. Ed. 3. f. Br. 468. 20. Ed. 3. fol. Fitz. Brief. 373. 375.

Vi Laica removenda. Note that upon the Writ De vi Laica Removenda, the Sheriff ought not to remove the Incumbent, who is in poſſeſſion of the Church, be in poſſeſſion of right, or of wrong; for the Sheriff is onely to remove the force, and is to ſuffer the Incumbent to enjoy his poſſeſſion. Fitz. 54, 55.

And if the Sheriff will remove, or goeth about to remove the Incumbent who is in poſſeſſion, the Incumbent ſhall have a writ directed to the Sheriff, commanding him that he ſhall not remove him, &c. and if he hath removed him, that then he without delay ſhall make him amends; and if the Sheriff ſhall not do this, the party may have an Alias, and Pluries, and an Attachment againſt the Sheriff.

Utlarie. *Retorne de Utlarie.* Vide *Returne de brief de Exigent.*

CAP. 79.

Waſt. *Retorn' de ſummons in vaſto.*

Pleg. de proſequend' { *Jo. D.* / *R. Ro.*

Summon infranom', *I.S.* { *J. P.* / *W. F.*

ET ulterius ego A. B. armig' vic' comit' infraſcript' Juſtic' dñi. Regis infraſcript' certifico, quod poſt ſum prædict', ſcz. decimo die A. anno infraſcript' exiſtent' die dominico immediate poſt divinum ſervic' in Eccleſia parochiali de B. infraſpec', nulla prædicat' adtunc ibidem exiſten, apud maxime uſuale oſtium Eccleſiæ parochiat' illius, infra quam quidem parochiam tent' infraſcr' jacent & exiſtunt, proclam feci ſum prædict. ſecundum formam ſtatuti in hujuſmodi caſu ædit' & proviſi. *Proclam.*

A. B. Armig' Vic.

Note, That firſt the ſummons muſt be made upon the land waſted. Fitz. Diſceit. 59. And after the Sheriff muſt proclaim the ſummons at the Church door of the pariſh where the houſe or land lieth, and then he muſt make his return of all, as above.

The Sheriff may return the deff. Nichil, &c. in a Writ of waſt: *Plz icy la plt avera tiel judgment come ſi le bre. uſt eſtre retorne ſervia* 11. H. 6. Br. Retorn. 101.

In waſt the Sheriff returned the Names of ſome of the parties, in falſe Latin, as Johes where it ſhould be Johem, but the Return was allowed for good. Fitz. Retorn. 42.

In waſt at the Diſtring. the Sheriff returned that the Deff. was diſtreined, and returned for mainpernors two, J. S. et J. C. and for that the Deff. appeared not, a Writ went out to enquire of the waſt, which was found, and the Plt. recovered. And the Deff. brought his Writ of Diſceit againſt the Sheriff, for returning that he was diſtreined, whereas he was not, &c. Fitz. Diſceit. 30.

Waſt vers 2 de tenements qe ilz tiendra par via del lz l'aunc. le plt. & pour lour deſt bre iſſit d'enquire del waſt, & le vic. retorn. le enqueſt qe dictz ilz ne tiendre les tenements pour vie del lez l'aunc. &c. Et le vic. ſi amercera pour ceo qe il aver priſe tiel verdit ſanz garrant. Fitz. verdict. 37.

In

In waſt vers t. par anz. le plt recov. le bien waſt & damages, Et le vic. retor. qe nul vient à reſceiv. le ſeiſin; Et qe le deff. nav' bienz dont il pent levy les damages. Icy la vic. puet lever le t'me al plt. in execution pour ſes damag. Fitz. Executor. 248.

Retorn' de breve ad inquirend. de Waſto.

Virtute brevis dñi Regis mihi directi Ego *A. B.* Armig. vic. com̃ pred (tali die & anno) in propria perſona mea Acceſſi, ad locum vaſtatum (or ad Tenementa vaſtata) in dicto breve nominat', & apud S. (ſc' the town wherein the Tenement or place waſted lieth) feci Inquiſitionem, &c. put iſtud breve in ſe exigit & requirit.

Reſiduum executi' iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

INquiſitio, &c. qui dicunt ſuper ſacramentum ſuum prædictum quod *H. A.* et *I.* uxor ejus in dicto brevi nominat', feceř vaſtum, venditionem, & deſtructionem in omnibus in eodem brevi ſpec', viz. permittend' unam aulam præcii 40 s. duas cameras præcii 3 l. & unum ſtabulum precii 20 s. eſſe diſcopertum pro defect' reparatiõ earundem domorum et per tempeſtates pluviales ſuper ill' deſcendent' devenerř putrid' & corrupt', &c. contra formam proviſionis in eodem brevi content'; Et ulteri' Juř præd ſuper ſacramentum ſuum p̃dict' dicunt quod prædict' *A.* et *I.* aliud neque plus vaſtum, vendicionem, ſeu deſtructionem feceř in domibus predictis. In cujus rei teſtimonium, &c. ut ſupra.

A. B. Armig. Vic.

Executio iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

Inquiſitio indentata capta apud G. in Comitatu C. (tali die & anno) coram *W. L.* vic' com̃ præd, virtute cujuſdam brevis dñi Regis eidem vic' inde direct' & huic Inquiſit' conſut' per ſacrament' xii Juratoř, qui dicunt ſuper ſacrament' ſuum, q. *R. M.* in dicto brevi nominat', fecit vaſtum & deſtructionem in boſco in quo in præd fit mentio, et in boſco præd ſuccidit xx quercos præcii cujuſlibet xx d. part' inde vendend, & partem inde aſportand, ad exhereditationem *W. F.* infraſ. & contra form̃ proviſionis in eodem brevi ſpecificat', Et dicunt ſuper ſacr̃m ſuum q. præd' *R.* nullum majus vaſtum in boſco præd fecit, put eis aliquo modo conſtare poteſt; in cujus rei, &c. Vide liber Intrac' fol. 695. c.d. *Aliter.*

Virtute iſtius brevis mihi directi, acceſſi ad locum vaſtatum in brevi iſto content', prout interius mihi præcipitur, Et reſiduum execut' iſtius brevis patet in quadam Inquiſitione huic brevi annex'.

Inquiſitio indentata capta apud F. in comitatu C. tali die & anno, coram *A. B.* vic. com̃ prædict', virtute cujuſdam brevis dñi Regis ei direct', & huic Inquiſitioni annex' per ſacramentum *A. B.*, &c. (ad numerum xii) qui dicunt ſuper ſacrament' ſuum, quod *I. R.* in brevi præd nominat' fecit vaſtum, venditiõ, et deſtructionem, in ten̄', terris, & boſcis, in brevi præd ſpec', viz. in permittend aulam, &c. in brevi præd' ſpec' diſcoopert', per quod groſſum maeremium earundem domoř per tempeſt' pluviales ſuper illas deſcendentes, putrid' devenit, &c.

In an action of waſt againſt 2. a Writ went to the Sheriff to enquire of the waſt, and he returned that the one of them made the waſt, and not

not the other, this ſeems to be a good Return. Vid. 14. E. 3. Fitz. Retor' 111.

In a Writ to enquire of waſt Committed in A. B. and C. the Sheriff muſt return Quod Acceſſit ad Tenta infraſcr: And the inquiſition taken at one of the Townes will ſerve for all. 34, H. 6, 49.

If the Sheriff ſhall return Quod Acceſſit ad Villam, it is not good, but Quod Acceſſit ad locum, &c. 11. H. 4. 6.

Waſt committed in a place called Reddel, The Sheriff returned Quod cepit Inquiſitionem apud Reddel, it is not good, but it muſt be, Ad locum vaſtatum. 40. E. 3. 20.

In a Writ to enquire of waſt aſſigned in S. it is no good return for the Sheriff to ſay, quod acceſſit ad S. but he muſt ſay, quod acceſſit ad locum vaſtatum, or tenta vaſtata, & apud S. fecimus Inquiſitionem, &c. Fitz. Waſt 51. 27. H. 8. 13. Br. 2.

In a Writ of waſt, the Sheriff returned, q cæpit Inſtitutionem die Sabbati pxim apud R. And for that he did not ſhew what Saturday (it was in certain,) And alſo for that he ſaid not, Quod vix ad locum vaſtatum, prout breve exigit, therefore the Sheriff was amerced, and a new Writ awarded, &c. Fitz. Waſt 64. 40. E. 3. 20. Br. 17.

And note, that in theſe Caſes the perſonal appearance of the Sheriff is requiſite. Co. 4. 65.

Yea, the Sheriff (in a Writ to enquire of waſt) ought to go (with the Jury) to every town and to every place waſted, lying in ſeveral towns, and there ought to view the places waſted, and then to make Inquiſition in any one of the towns of all the waſt done in all the towns, and alſo ought to find the waſt in certain, ſcz. ſuccidendo, ſo many oakes, & hujuſmodi ad valenc' &c. Et permittendo unam aulam & unam cameram, &c. & ſic de ſingulis, and alſo muſt find the value. See Br. Waſt. 17. & Fitz. Waſt 51. 34. H. 6. 44. Br. 16.

And yet where the waſt is aſſigned in two or mo towns, the Sheriff may cauſe the Jury to go and ſee the waſt in each town, and may make his inquiſition in one of the towns onely, or in any other town twenty leagues from the place waſted, as it ſeemeth by the opinions of Thirne and Hanke quære tamen. 12. H. 4. Fit. Waſt 62. Br. Waſt 68. Br. Reddiſ. 5. Co. 8. 152.

For by other opinions, the Sheriff in proper perſon, and at the place waſted, muſt enquire thereof; And if the Sheriff ſhall enquire of the waſt in any other place (where it ſhould not be) and ſhall there make this enquiry, although it be in his own perſon, yet it is erronious and void. Vide 16. E. 3. Fitz. Retorn. 82. where the Sheriff returned, quod acceſſit ad loca, & boſca vaſtata, & cepit inquiſitionem, but for that it appeared by the Inquiſition that it was taken at H. which was none of the places, nor town, &c. therefore although that the Sheriff came to the places, and that the Jury went and ſaw the waſt, yet for that the Inquiſition was not taken there, the Sheriff was amerced, and a new Inquiſition taken, &c.

The Sheriff in this Writ (to enquire of waſt, which was aſſigned in two or three towns) returneth, quod virtute brevis prædict' in villa infracontent' cæpit Inquiſitiõ, or he returneth Inquiſitio capta apud A. (being one of the towns) and it appeareth not whether he (or the Jury) came to all the towns, and therefore ſuch returns are not good. Br. Waſt. 17.

For in ſuch caſes the Sheriff ought to make his return, Quod virtute brevis, &c. Acceſſit ad loca or tenementa vaſtata, ſcilicet, to all the towns (in which the waſt was aſſigned) and at A. (being one of the towns) fecit inquiſitionem, &c. 34. H. 6. Br. Waſt 17. Fit. Waſt 51.

Or the Sheriff may return, quod acceſſit ad ambas villas, &c. and that he cauſed the Jury to go and ſée the places waſted; but he may return the Inquiſition to be taken at one place only. Br. Retor 39. And note, that if any of the Jurors have made the view, that is ſufficient. Old N. bre. 173.

Note, where the Sheriff ſhall do his office well in one town, and not in the other town (in this writ) a new writ muſt be awarded, and all ſhall be enquired of de novo, for all the Inquiſition muſt be made all by one and the ſame Enqueſt, and all at one time, by the opinion of Thirne. 12. H. 4. fo. 3. Br. Retor 39. & Waſt 68.

Note, that when the Sheriff hath made ſuch his Enquiry of the waſt, he muſt return the Inquiſition before the Juſtices of the Common Pleas, and the ſingle value of the waſt; *Et donqs les Juſtices taxer cel waſt accordt al Statut. de Gloceſt.*

Upon a writ to Enquire of waſt, the Sheriff returned that the Jurors were charged before him, and after departed in deſpite of the Court, without giving up any verdict, This return was holden good; and an Attachement was awarded out againſt the Jurors, &c. Fitz. Attach. 6. Quære if the Sheriff might not have aſſeſſed a fine upon the Jurors for ſuch their departure. Vide hic cap. 64.

Upon this Writ to enquire of waſt, the Jury may well find that no waſt is done, (if the truth of the matter be ſo, for otherwiſe they ſhould be perjured;) Otherwiſe it is, if the waſt be confeſſed, there the Jury can not find that no waſt is done. Neither may the Sheriff make ſuch a return, p Brown, & Portman Juſtic' Paſch. 7. E. 6.

It ſéemeth by Waſt. Fitzh. that the Sheriff in this Writ to enquire of waſt, may enquire of waſt by the oath of ſix or eight perſons, and is not bound to take twelve perſons, for that this writ is awarded by office of the Court, to enquire, &c. Fitz. 107. c. But the contrary was holden Anno 7. E. 6. ſc. That in ſuch caſe, the Sheriff ought to make his Enquiry by xij at the leaſt; by Crown and Portman Juſtic.

Sur tel Inquiſic. le deff. peut done evidence; Et les Jurors pot trover pour le deff. qe nul waſt eſt, Co. l. 335.

Sur tielz Inquiſitions priſe devant le Vic. le deff. peut vener, & aver ſon challenge (devant le Vic.) al Array, & teſtes; Et ceo coment que le Inquiſition ſoit priſe per default. Auxi le deff. poet aver Atteynt, tout ſoit que il neſt que Enqueſt de Office. 2. H. 4. 3. Fitz. Atteynt. 13. Br. Chall. 27. *qe le party poet challenge* p affinitate; tamen quære *del Atteyne.* N. bre. 113. *Auxi pour challenge al teſtes quare, Eo que le verditt eſt done par le Jury, & rēy par les teſtes.* 23. aſſ. Br. Chall. 115.

Nota, *que al Comon Ley, la fuit un Prohibition de Waſt, envers tent. par le Curteſy & in Dower, & envers le Garden in Chivalry. Et le Stat' de* Mag' Carta cap. 4. *confirme le Comon Ley envers le Garden. Apres le Stat' de* Marleb. cap. 23. *done auxi un Prohibition envers le tenant a terme des Ans, ſilz font waſt (come envers le Garden, ou tent. in Dower,) Mz. in cel Prohibition hōe ne recovera frq; ſingle damag. al Comon Ley.*

Apres le Stat. de Gloceſt. *(fait* 6. E. 1. cap. 5.) *enlarge ce Prohibition, ſc. lon il ne fut devant frq; envers tent. par la Courteſy & in Dower, le Gardian, & envers tent. pour Ans, Ore ceo Stat. voet que brief de Waſt ſa poet envers tent. par le Curteſy, & tent. a terme de vie tent. pour ans, & tenent in Dower: Et ouſter lon il recover forſq; ſingle damag. devant, ceo Stat. voet qne il recover treble damag. & auxi le view waſt. Mz. coment cel Stat. de* Gloc. *ad enlarge cel Prohibition, & done plus grievous puniſhment que devant, uncar in cel Prohibition un ne ſera punye frq; del waſt fait apres le Prohibition al ex direct, mz pur le waſt fait devant le Prohibition ne giſt, &c.*

Et pur ceo le Stat. de Weſtm. 2. cap. 14. *fuit fait, Et par ceo Stat.* Non fiat de cætero bre de Prohibition, ſed breve de Sumonitione, ita quod ille de quo queritur, reſpondeat de vaſto facto quocunq; tempore; *Iſſint par ceo Stat. prohibitio. eſt ore oneſte, & in lieu de cel un Summons eſt done, in quel bre le deff. reſpond. auxi pur le waſt fait devant le bre purchaſa, come pur le waſt fait ap's, ut dicitur: mz.* vide Foliambs Caſe. Co. 5. 115. hic cap. 58

In bre d' enquire de waſt, le Vic. Retour. mandavi ballivo libtatis, &c. qui nullum dedit reſponſum, and was amerced, for that he ſhould habe entred the Franchiſe, he being herein a Judge by the Writ. Fitz. Ret. 53.

In bre d' enquire de waſt le Vic. Retor. Mandavi ballivo libtat. he was therefore amerced, and the Sheriff was commanded to execute in himſelf. Fitz. Retor 92.

And ſo now by the ſtatute made 13. E. 1. cap. 14. in an action of Waſt, firſt a Writ of Summons ſhall be awarded, and if the partie (complained of, or againſt whom the Writ is brought) come not in and appear upon the Summons, he ſhall be attached, and after the attachment he ſhall be diſtreyned, And if he come not in after the diſtreſſe, then upon his default, a Writ ſhall go out to the Sheriff (of the County where the Waſt is ſuppoſed to be made) whereby the Sheriff ſhall be commanded, that in his proper perſon, he taking with him 12 lawfull men, &c. ſhall go to the place waſted (or where the Waſt is done) and ſhall enquire of the Waſt done, and ſhall return the Inquiſition before the Juſtices (and the ſingle value of the Waſts, ut ſupra) and after the Inquiſition returned, Iudgment ſhall be given, &c. Weſt. 2. c. 14. See Fitz. Waſt 45. 51. 62.

Note, that by this ſtatute the Sheriff is made both a Judge and Officer, quod accedat ad locum vaſtatum, &c. And therefore in a Writ to enquire of waſt, directed to the Sheriff of Land, &c. within a Franchiſe, the Sheriff ought himſelf to enter into the Franchiſe, and to execute this Writ himſelf, and if therein he ſhall return Mandavi ballivo, &c. he ſhall be amerced. Br. Retor 38. & Fitz. Retor 53. 11. H. 4. Br. Proces 37. & Officer 34.

And if he ſhall not enter the Franchiſe and execute and ſerve this Writ himſelf, but by the Bailif of the Franchiſe, it is erronious; And yet if the Sheriff ſhall return, quod acceſſit ad terram, the other cannot aſſign this for erroz, q non acceſſit ad terram juxta returnum ſuum, for that he cannot contradict the retorn. 7 H. 7 4. Br. Officer 42.

Upon a Nihil dicit, in waſt a Writ went out commanding the Sheriff, quod in propria perſona ſua accedat ad terram vaſtat' to enquire of the damages, and it was holden good (and not to enquire of the waſt, for that was confeſſed) And here it is not neceſſary that the Sheriff ſhould go thither in perſon, according to the ſtatute of Weſtm. 2. for that is onely in vaſto inquirendo, where the defendant maketh default at the diſtreſſe. Dyer 204.

Nota auxi qe briefe de Eſtrepement giſt in actio. de waſt. & que le vic. poet faire reſiſtance in ceo breve, vide hic ante a. cap. 58.

CAP. 80.

Retorna de Withernam.

Witherram. VIrtute iſtius brevis, Cepi duas Ollas æreas, duas patellas æreas, &c. de bonis et catallis *I. H.* in iſto brevi nominat' in withernam, et ea *W. B.* infranominat' deliberari feci, habend' eidem *W. B.* quouſque pd *I. B.* catall' præd' *W. B.* deliberet' volue', prout breve iſtud in ſe exigit et requirit: Et ulterius vobis certifico, quod præd' *I. H.* in iſto brevi nomi'ſ null' habet alia bona neque catalla quæ in Withernam capi poſſint, aut per quæ attach. poteſt juxta tenorem hujus brevis. Virtute

Virtute &c. cæpi in Withernam apud D. in Com infraſ. 2. vaccas, &c. de averiis infranominat' *I. D.* Et duas vaccas de averiis *R. T.* infranominat' ad valenc' &c. Quæ quidem averia præd' abinde fugere, et duci feci in quoddam locum apud S. in Com. predict. ſalvo et ſecur ibidem cuſtodiend, ſecund exigent' iſtius brevis, ubi averia predict. incumbent, Et *I. D.* et *R. T.* nulla habent plur, ſive alia averia ad præſens, in balliva mea, quo ullo modo in Withernam capere poſſum, prout interius mihi præcipitur.

Aliter. Virtute iſtius brevis cæpi duas vaccas, et duas boviculas, de averiis infranom *R. D.* et duas vaccas, et duas boviculas, de averiis *T. L.* quos deliberari feci *I. C.* infranom', ſalvo et ſecure cuſtodiend, quouſque alia averia infra ſpecificat' ipſius *I. C.* prius capt', et ad loca mihi ignota tranſmiſſa, deliberare poſſum, prout interius mihi precipitur.

Aliter. Infraſcript' *I. H.* nulla habet averia in balliva mea quæ in Withernam capere poſſum, ſecundum exigentiam hujus brevis.

Aliter. Infranom *I. H.* Nulla habet bona, Catalla, nec averia in balliva mea, quæ in Withernam Capere poſſum ſecundum exigenc'. hujus brevis: (Nec aliud habet in balliva mea p quod poteſt Attachiari) Nec eſt inventus in eadem.

Aliter. Nulla ſunt bona neque Catalla in balliva mea infranom *I. H.* quod in Withernam capere poſſum. Et ideo præfatus *I. H.* manucaptus eſt p *I. D.* et *R. R.*

Mz quere de ceux deux darein Retornes, & ſemblables. car ſi le Vic. ou Bayliff, fait retorne, que le party Nulla habet bona, &c. *ſi tiel Retorne ſoit fait in Banke le Roy, ou Common Bank, le Plt avera un* Capias *vers le Deff. & iſſint Proces de utlary. Sed ſi le* Withernam *ſoit agard in le County Court ſur tiel retorne fait par le Bayly le Plt avera* Alias et Pluries, et ſic infinite; *mz nul auter Remedy.* Fitz. 74. c. d. Vide Dyer' 188, 189. *tiel Retorne.*

Withernam. **In a Repl. the Sheriff returned,** Averia Elongata, **whereupon there went out a Withernam, and the Sheriff returned,** Quod non habet bona ſeu catalla infra, &c. Nec eſt inventus in eadem, **And thereupon a** Capias **went out, and the Sheriff returned** Cæpi corpus, et quod languidus eſt in priſona, **and thereupon went out a duces tecum, and the Sheriff brought the partie into the Court,** &c. Br. 100.

Upon this Writ the Sheriff returned that he had taken the beaſts of the Deff. in Withernam, and delibered them to the Plt, and that he had Attached the Deff. &c. Fitz. Gage deliverance 1.

Upon the Pluries Repleg' **the Sheriff returned** Catalla Elongata, &c. **and thereupon the Plt had a Withernam, to take the goods and Cattel of the Deff.** ad valenciam, &c. **with this clauſe,** ſc. Et ſi Querens fecerit te ſecurum, tam de Clamore ſuo proſequendo, quam de averiis returnand ſi, &c. *Tunc pone le deff.* &c. Ad reſpond tam Dño Regi de contemptu, quam præfato Querent de dampnis et injuriis, &c. **And according to the ſame Writ the Sheriff returned,** Quod querens invenit Plegios, de proſequendo, et de Retorno habendo ſi, &c. Et quia nō potuit repleg' Catalla primo Capta, præfato querenti, juxta exigenc. brevis, Ideo cepit Sex boves, &c. de bonis et Catallis deff. prius, ad valenc. &c. Et eos præfato querenti deliberavit in Withernam, detinend ſibi quouſque, &c. **and he further returned,** quod deff. Nichil habuit p quod poteſt Attachiari, &c. Dyer. 188.

In Withernam, the Sheriff returned that he did not deliver the Cattel to the Plt, for that he was not in the Country. Thel. 228. 9.

Alſo in this Writ the Sheriff may return Tarde. Fitz. Jour' 34.

By Bracton and Britton, the Sheriff upon a Withernam may take Cattel or other goods to the double value. See hic.

Et par aſcun auter opinions, le Vic. ou Officer poet prendre in Withernam 40 *ou* Centum averia *on plusors, Comt que le Pleint fuit ſue frq; pur ou de un* tantum, Et nulla ſequatur pæna. N.Bre.45.

Ou le Vic. poet prend. les Beaſts del deff. in Withernam pat agarde de gentz de ſon County. Regiſt.83.

Alſo if a man ſueth a Replevin of pots, pans, or the like, yet upon a Withernam the Officer may take, Oxen, Horſe, or other Cattel or Goods. Viel N.Bre.45.

If a Plea of Withernam be in the County (by pleynt before the Sheriff, without the King's Writ) and the Sheriff commandeth or ſendeth to the Bailiff of a Franchiſe, to make deliverance or execution of the Writ, and the Bailiff of the Franchiſe doth nothing therein, Then the Sheriff ex officio ſuo, (without any Writ) may enter into the Franchiſe or Liberty, and make deliverance of the Cattel, and this the Sheriff may do by force of the ſtatutes made 52. Hen. 3. cap. 21. & Weſtmin. 1. cap. 17. Fitz. Wither. 2. & 10. Regiſter 81. b Fitz. 68. f.

See plus hic titulo Repleg' cap. 73, & 114.

Nota qe en Replevin al plur. le Vic. retorne averia Elongata, *& le deff. appeare, & non obſtant Withernam fuit agard, & pur ceo que fuit erroniouſment,* Superſedeas *fuit agard al Vic. de ſurceaſſer, & que ſil aver preſt les beaſts le deff. que il eux reſtore, & le Vic. retorne que devant le* Superſed. *a luy livere, il aver deliver les beaſts de Deff. al Plt & qe le Plt era eſſoigne, iſſt que il ne poet eux reſtore al deff. &c. 7. E. 4 15. N.Bre. 45.*

CAP. 81.

Return of Commiſſions, Writs, and Proceſs out of the Chancerie.

Adjournment. Virtute, &c. omnia brevia mihi deliberat' ſeu deliberand', coram Juſtic' infraſcript', apud Weſtm' in Octab' Sancti *Hill'* returnabil' ſive returñ, habeo coram Juſtic' infraſcript', apud Weſtm' die, &c. una cum omnibus executionibus eorundem. Et ulterius ad com' meum tent' apud Canteb' (tali die & anno) publice proclam' feci, q partes in eiſdem brevibus nominat', dies ſuos coram Juſtic' apud Weſtm', ad præfat' terminum conſervarent, prout iſtud breve, &c.

Certiorare.

Certiorare. Virtute, &c. Omnia & ſingula indictamenta R. B. infranominat', coram dño rege ubicunque fuerit in Anglia, ad diem infracontent' mitto in quadam ſcedula hunc brevi conſut'.

Virtute, &c. Indictamentum illud unde in dicto bre fit mentio, una cum omnibus idem Indictamentum tangentibus, in Cancellar' dicti Dñi Regis mitto &c. Aliter.

Certior' de Certifier Statt.

Certior' de Certifier Statt. *Que il ad anterfoits certifye ceo in le Chancery devant ceſt temps, come appiert par le Inrollment fait devant le maior, &c. ceſt bon Returne.* Fitz. 144 c.

Certiorare

Certiorare ſuper Protection'.

Virtute iſtius brevis domini Regis infraſcr' in Cancellar' ſua, ſub ſigillo meo diſtincte & aperte certifico, q. *Will'. T.* infranoñ ſub ſalvo cuſtod, vittellac' & tuicione villæ caſtri Marchiar' dñ Regis Callic', in obſequio ejuſdem domini Regis in S. prædict' conſanguinii ſui *W. D.* locum tenent' ſui generali villæ Caſtri ac Marchiarũ prædict' juxta formam domini Regis literarum patent', per quas eodem domino Rege præfat' *W. T.* in protectionem & defenſionem ſuam nuper ſuſcepit, non moratur, ſed moram trahit in Civitate *London* propriis negotiis ſuis intend, &c. *Certiorare ſuper Protection'*

Return' de Commiſsion de Rebellion.

DOmino Regi certifico quod tempore receptionis iſtius Coñiſſionis, mihi & al' direct', infranominat' W.W. capt' et arreſtat' fuit per W.S. Mil' Vic. com C. virtute diverſorum brevium eidem Vic' direct' et Gaolæ domini regis caſtri ſui C. per eundem Vic' commiſſus fuit, in qua quidem Gaola ego prefat' I. W. præfat' W. W. virtute iſtius commiſſionis attachiari feci, prout interius mihi præcipitur, ſed corpus ejus ad diem et locũ infracontent' habere non poſſum quia idem W. in eadem Gaola ſub ſalvo cuſtod dicti vic' ob diverſis aliis cauſis ibid detinetur. *Commiſsio de Rebell.*

A. B. Commiſſioñ.

Virtute, &c. domini Regis in Cancellariam ſuam certifico, quod A. B. infranominat' coram nobis ſacrament' præſtitit corporale, quod literæ patent' (unde infra fit mentio) ad manus infranominat' C. D. teſtatoris ſui devenerunt; Sed per ſacrament' ſuum dicit quod nihil de articulis et aliis circumſtant' in eiſdem literis patent' ſpecificat' coram ſe invent' fuit. *Dedimus poteſt.*

Reſponſum *H. L.* et *I. D.* Commiſſ.

Virtute iſtius Commiſſionis nobis directæ, cæpimus reſponſum T. D. infranominat' ſuper ſacrament' dei Evangelium, quod omnia in eadem reſponſione content' ſunt vera, Quæ quidem reſponſio ſic capta, eſt huic commiſſioni annex' una cum billa nobis ſimiliter in eadem direct', Et omnia alia quæ in eadem commiſſione content', ſive ad eandem pertinent, fieri fecimus ſecundum effectum et tenorem ejuſdem, prout interius nobis præcipitur. *Return' dem Commiſsiõ.*

The Return of a Dedimus poteſtatem *to take the Oath of a Sheriff.*

See plus hic fol.

VIrtute iſtius brevis nobis directi (tali die et añ, &c. infraſcr') recepimus ſacram infranominat' A. B. Vic' com' C. * de officio illo bene et fideliter faciend' juxta formam cujuſdam ſcedulæ preſentibus annex' prout interius nobis præcipitur: Ac prout breve iſtud in ſe exigit et requirit.

Alias.

* Tam de officio iſto bene et fideliter faciend' quam ſacram ſpecificat. in Act. Parliamenti anno regni dñe *Eliz.* nuper Rñe *Angl.* primo fact' ſecundum tenorem hujus brevis, et ſcedulæ huic brevi añex' et in omnibus aput in præd brevi præcipit'.

W. S. & *B. T.* Coñiſſ.

De

De Eligend. { Coronator' / Milites Parliamenti. / Burgenses Parliañ. / Viridar' Foreſtæ. } ☞ hic antea.

Ne Exeat Regnum.

Ante adventum iſtius brevis, et ante aliquam executionem ejuſdem A.B.C. D. E. F. &c. venerunt coram me I. D. Vicecomite S. et manucæperunt coram me præfat' Vicecom̃ pro L. M. videlicet quilibet manucaptorum prædict', ſub pœna decem librarum, q̃ idem L. citra craſtinum animarum proxim̃ futur', verſus partes tranſmarinas, ad aliqua dicti regis aut aliquibus de populis dicti dñi regis præjudicial' ſive dampnoſa ibidem proſequend, ſeu attemptand ſe non divertet, Nec quicquam ibidem proſequat', q̃ in dicti dñi regis, ſeu populi ſui præjudicium vel dampnum, aut ſtat' regni noſtri Angliæ everſionem cedere valeat, nec aliquem vel aliquos illuc mitter' ex hac cauſa: Quam quidem ſummam decem librarum iidem manucaptores conceſſerunt, et quilibet eorum per ſe conceſſit de terris et catallis ſuis ad opus dicti domini regis levar', ſi idem L. aliquid contra formam manucap. predict' fecerit, ſeu fieri fecerit, vel attemptaver̃ quoquo modo, Et hæc eſt tenor ſecuritatis unde interius ſit mentio, Quam dicto domino regi in Cancell' &c. ad diem, &c. mitto.

Retor' ſuper breve de Ordine Milit' recipiend': ☞ hic antea.

Retorn̄ de breve de Præmunire: ☞ hic antea.

Præmunire.

Return' de Proclamac' extra Cancellar'.

Proclamac'

VIrtute iſtius brevis mihi directi publice proclamar̃ feci infra balliam meam quod infranominat' H. B. ſub pœna legianciæ ſuæ coram domino rege in Cancellar̃ ſua infraſcript' ad diem infracontent' compareat prout interius mihi præcipitur: Nec non dicto dño Regi certifico q̃ infranom̃ H.B. non eſt inventus in balliva mea.

Quid *le vic. ſera ſz ce.* Vide mo' pp̃ Book 261.

A. B. Ar' Vic.

Retor. brevis de Attachment cum Proclam. in Cancellar.

VIrtute iſtius brevis mihi directi dño Regi certifico, quod 5 die *Aug.* Anno regni dñi Regis infraſcript. 3. apud *Cantabr.* in Com̃ *Cantabr.* infraſpec. Et 9. die *Aug.* Anno ſupradicto apud *Lynton* in Com̃ præd. Necnon 1 die *Septembr.* Anno ſuprad' apud *Numerkett* in Com̃ præd. Proclamari feci Omnia et ſingula in iſto breve content̃ ſecundum form̃ et effectum ejuſdem brevis, ꝓut interius mihi præcipitur. Et ulterius dicto dño Regi certifico, quod infranom̃ I. S. non eſt inventus in balliva mea.

Retorn' de Recog' extra Cancellar'.

Recog'.

EXecutio iſtius brevis patet in quadam Inquiſitione huic brev. i n ex'.

Inqui-

Inquiſit' indentat' &c. (ut ante fol.) Qui dicunt ſuper ſacrament' ſuum, q. E. M. in brevi prædict' nominat' die captionis hujus Inquiſit' fuit poſſeſſionat' de diverſis bonis et catallis ſubſequen', viz. de frument' vocat' Rye, ad valenc' x. s. de hordio ad valenc' &c. et de quibuſdam utenſilis vocat' houſhold ſtuff ad valenc' &c. Quæ quidem bona et catalla ego præfat' vic' liberari feci præfat' R. per præcium præd', prout per breve prædict' mihi præcipitur; Et ulterius Jur' præd ſuper ſacram ſuum præd dicunt, quod præd E. die recogn'. deb' in eodem brevi ſpecific', ſeu unquam poſtea nulla alia ſive plur' habuit bona aut catall' terr', neque tenementa, in Com̃ prædict', quæ R. W. in eodem brevi nominat' liber' fac' poſſum. In cujus rei teſtimonium, &c. ut anteq.

A. B. At' Vic.

Retorn' ſecuritatis pacis.

EGo I. B. unus Juſtic' domini Regis in Com̃. C. de pace conſervanda aſſigñ mitto coram domino Rege in Cancellariam ſuam, tenorem ſecuritatis pacis, de qua in dicto brevi fit mentio, ſub ſigillo meo, prout iſtud breve in ſe exigit et requirit, qui quidem ſecuritatis huic brevi eſt conſuta. *Securit. pacis.*

Retorn' de ſupplicavit.

EGo I. D. miles vic' Com̃ infraſcrip', dño regi in Cancellar' ſua certifico, q. ante adventum iſtius brevis A. B. infranominat' capt' fuit in balliva mea, et in priſona dñi regis ibidem ſub cuſtodia mea derent', virtute cujuſdam alterius brevis huic brevi conſut', * pro quo quidem, præfatus A. B. ante adventum iſtius brevis traditus fuit in balliva quibuſdam B. B. C. D. E. F. et H. P. qui manuceperunt et quilibet eorũ manucepit per ſe pro præfat' A. B. ſub pœna x. li. quod ipſe dampnũ vel malũ aliquod H. P. in dicto brevi de ſupplicavit ſpec' infra talem diem proxim̃ futurum non fac', nec fieri procurabit quoviſmodo, Quas quidem x. li. præfat' manucaptor' conceſſerunt, et quilibet eorum per ſe conceſſit de terris et catallis ſuis et cujuſlibet eorum, ad opus dicti dñi regis levari, ſi dampnum vel malum aliquod eidem *H. P.* per præfat' *A. B.* aut per procurationem ſuam interim eveniet ullo modo, &c. Et hæc eſt ſecur' pacis quæ præfat' *A. B.* coram me invenit, &c. *Supplicavit.*

* Or, pro quibus quidem quetelis de minis, præfatus, &c.

Sub qua quidem balliva, præfatus *A. B.* permiſſus fuit ire ad largũ, extra priſonam predictam, et poſtea ad cuſtodiam meam non revenit, quapropter corpus predicti *A. B.* coram dño rege ad diem et locum infracontentos habere non poſſum. *Aliter.*

Ego, &c. Dño regi in Cancellaria ſua certifico, quod *A. B.* infranominatus nullam mihi invenit ſecuritatem pacis de qua interius fit mentio, ſed in priſona dñi Regis ſub cuſtodia mea ad præſens reſidet. *Aliter.*

Supplicavit de pace *iſſit hors de* Banco Regis, retorn' Octab. *Michu, Et le deff.* medio tempore *trova Suerty in le Chancery,* & ad Superſedeas *al vic. de Surceaſ. & ſur le* bre de Supplicavit *le vic retorne le dit* Superſed; Quære *ſi le* Superſed (*on ceo retorne*) *ſerra allowe*; Cr dicitur *que Banke le Roy eſt* altior Curia. Cromp. author *des Cortes* 74. et 78. et vide hic Retorñ de Corpus cũ Cauſa.

Si ſupplicavit *fort direct al vic. de arreſter aſcun de trover Suerty pour le peace, Et le vic. fait precept a ſon bayliff de cauſer le party de venir devant*

devant luy de trover Suerty, in ceo Caſe ſi le party ne voet obeyer tiel warrant ou precept, il ne ſerra commit al priſon, mes que le vic. doit retorne ceo matter, Et ſur cel retorne la iſſer un Capias, ut dicitur. Tamen *ſemble ſi le party ne voet obeyer, fait reſiſtance, ou refuſe de vener devant le vic. de trover Suerty, que le Bayliff poet impriſon luy.* Vide Country Juſtice cap. 73.

Alſo if a Supplicavit of the peace be directed to the Sheriff, and to all the Juſtices of peace of that County, and be delibered to the Sheriff, he only ought to execute it; ſc. He is to grant out his warrant to bring the party before him (alone) to find ſuerties for the peace, and he is further to do therein in every behalf according as the writ directeth him.

And by ſuch warrant (or precept) the Sheriff (as it ſeemeth) may command his Bayliff, (or the Conſtable, or other indifferent perſon) to carry the party to priſon, if he ſhall refuſe to come before him to find ſuerties, &c. And yet the writ to the Sheriff is to arreſt and commit him, ſi coram vobis, vel te, recuſaverit, &c. So that the Sheriff may (in ſuch Caſe) grant or commit part of his authority to another, ut ſup. But the Sheriff can not give power to another to take this ſuerty for the peace; for that is a Judicial power, which he can not aſſign over, nor make any Deputy therein. 9. E. 4. Br. Deputy 20.

CAP. 82.

Retorne de Proces, extra Scaccarium.

Retorna de Capias, extra Scaccarium.

Cepi tã corpus, quã ter'. VIrtute iſtius brevis mihi directi Baron̄ infraſcript̄ certifico, quod cepi corpus infranominat̄ *I. R.* cujus corpus coram dictis Baronibus parat̄ habeo ad diem infracontent̄: Necnon viceſimo die I. anno, &c. infraſcript̄ cepi in manus dicti dñi regis, nomine diſtrictionis, cer̄ ter̄ et tenementa infranominat̄ *I. R.* jacen̄ et exiſtent̄ in B. Annui Valor̄ C.s. prout iſtud breve in ſe exigit et requirit.

A. B. Ar' Vic.

Cepi Manerium. Virtute iſtius brevis mihi directi, Baron̄ infraſcript̄ certifico, q̄ viceſimo die Marcii, anno, &c. infraſcript̄ cepi in manus dñi regis infraſpec. Manerių infraſcript̄ cum pertinen̄, prout interius mihi præcipitur: Et ſi ſit cum Inquiſitione pro anni valore, tunc ſic breve prædict' retorn̄ eſt: Aliter.

Reſiduum executionis iſtius brevis patet in quadam Inquiſitione huic brevi annex̄.

A. B. Armig' Vic'.

Inquiſit. Inquiſitio Indentat̄ capta apud C. in Comitat̄ prædict' ſecundo die Martii anno, &c. Coram *A. B.* Ar' vice' Com̄ prædict' virtute brevis dñi regis mihi directi et huic Inquiſitioni annex̄ per ſacram̄ *A. B. C. D.* &c. (ad numerum xij Jurat̄) Qui dicunt ſuper ſacrament̄ ſuū, Quod, &c. (as the matter is.) Canteb.

Aliter Cepi Corpus. Virtute iſtius brevis mihi directi, cepi corpus infranominat̄ *I. S.* cujus corpus coram Baron̄ infraſc. parat̄ habeo, prout interius præcipitur mihi.

Virtute

Virtute iſtius brevis mihi directi Baron infraſcript' certifico; Quod secundo die M. anno regni dñi Regis infraſcript', &c. decimo nono; Ego A. B. Aſ vic. com. C. infraſcript' cepi, reſumpſi, & in manus dñi regis ſeiſivi, Omnia Tenementa, ſhopas, gardina, & omnia alia pertin, virtute brevis præd reſumend quæ patent in Inquiſitione huic brevi conſut'. *Cepi in manus domini Regis.*

Retorn' de ſeiſuer in Scaccar', nomine diſtrictionis.

VIrtute iſtius brevis mihi directi ſecundo die M. anno regni dñi regis infraſcr' decimo nono, in manus dñi regis ſeiſivi manerium de S. infraſcript' cum pertin in S. in com infraſcript', quod quidem manerium eſt clari annui valoris in omnibus exit' ultr repriſ. xx. l. de terr P. B. in ſced huic brevi annex' nominat'; Ac cepi etiam in manus ejuſdem dñi regis unum torment' vocat' a Petytronell cum le flask & touchbox valor x. s. nomine diſtrictionis, de bonis et catallis I. C. in ſcedul' prædict' nominat' prout iſtud breve in ſe exigit & requirit, &c.

A. B. Aſ' Vic.

Virtute, &c. Cepi de terris & Tenementis infranom W. R. ad valenc' lx. s. quos habeo coram Baron infraſcript' ad diem & locum infracontent', prout interius mihi præcipit', Et ulterius Baron infraſc' certifico, quod predict. W. nulla alia ſive plura terras neque Tenementa, bona neque catalla in balliva mea habet, unde reſiduum debiti infraſcript' fieri facere poſſum, prout iſtud breve in ſe exigit & requirit.

Baron infraſcript' certifico quod omnia terr & tenementa quæ fuer infranom N. F. (aut alia anteceſſorū ſuorum) jacent in com S. non in balliva mea. *Terra jacet in alia com'.*

A. B. Armig. Vic.

Infranominat' *I. E.* non eſt inventus in balliva mea, nec habet ulla bona ſeu catall in balliva mea, ſed virtute iſtius brevis mihi direct, Baron infraſ. certifico, q. xv. die Junii, anno xix. dñi regis infraſcript' cepi in manus dicti dñi regis nomine diſtrictionis, vij. Meſſuag' ſive tenementa cū pertin in M. quæ ſunt clari annui valor l. s. Et unum capitale Meſſ. ſive firmar cum pertinent in W. annui valor quinque Marcarum. *Seiſure* nomine diſtra.

Aliter. Infranominat' *A. B.* non eſt inventus in ball' mea; Et ulterius Baron infraſcript' certifico, q. virtute iſtius brevis mihi direct', tali die & anno infraſcript' cepi in manus dicti domini regis unum Meſſuag' ſive tenementum cum pertinen in B. in com C. infraſcript' annual' valor' x. li. ut de terris & tenementis infranominat' *A. B.* Necnon ſex vaccas, unum Taurum, & unum ſpadonem precii in toto viij. li. de bonis & catallis ejuſdem *A. B.* nomine diſtrictionis, prout mihi præcipitur.

Quæ quidem omnia bona & catalla penes me remanent invendit' pro defectu empt'. Et idem *A. B.* nulla alia ſive plura bona ſeu catalla, terr ſeu tñta habet infra ballivam meam, quæ in manus dicti dñi regis ad præſens aliquo modo capere vel ſeiſire poſſum.

Aliter. Baron infraſcript' certifico, quod virtute iſtius brevis mihi directi ij. die M. anno, &c. infraſcript', cepi in manus dñi Regis manerium de S. cum pertinen infraſ. prout, &c.

Scedula. Reſiduum execut' iſtius brevis patet in quadam ſcedula (ſive Inquiſitione) huic brevi conſuta.

Inquiſitio. Inquiſitio Indentat' capta apud C. in com̃ prædict' ij. die Martii anno, &c. xix. coram me *I. H.* milit' vic. com̃ præd, virtute brevis dicti dñi Regis clauſ. mihi directi, q̃ eſt huic inquiſitioni annex' per ſacram̃ *I. D. R. R.* &c. proborum et legalium hom̃num com̃ prædict', Qui dicunt ſuper ſacram̃ ſuum q̃ manerium de S. cum pertineñ eſt annui valor' v.li. ultra omnia onera et repriſ. In cujus rei teſtimonium, &c.

In alio Comitat'. Manerium de S. infraſp' jacet in com̃ E. et non in com̃ C. ideo tenentes inde diſtringere non poſſum prout interius mihi præcipitur. Aliter.

Infranominat' *E. S.* eſt vic' com̃ B. et eſt comorans in dicto com̃ B. et non eſt inventus in balliva mea.

Il m. party. Baroñ infraſcript' certifico q̃ ego *H. W.* miles modo ſum vic' com̃ C. Ideo meipſum diſtringere non poſſum, prout interius mihi præcipitur. Br. Proces 9. et hic cap. 20.

Infranominata dña *I. S.* Nichil habet in maneriis, terris, et tenementis infraſ. niſi cum *R. S.* milit' quem ipſa accepit in virum.

Retorn' de diſtring'

Where the party is ſufficient, ſee how the Return ſhall be. Hic cap. 56.

Aliter. Infranominat' R. A. Nihil habet in terris, tenementis et hereditamentis infraſcript', per quod ipſum diſtring' poſſum.

Aliter. Nullum tale manerium, nec ulla terr̃ ſeu tenement' cognita p̃ nomen de E. jaceñ in com̃ Cant' unde tenent' inde diſtringere poſſum, prout interius mihi præcipitur.

Aliter. Infranominat' I. K. et R. R. Nihil habent, Nec eorum alter aliquid habet in balliva mea; Et ulterius Baroñ infraſcript' certifico, quod nulli ſunt executor̃ vel adminiſtrat' bonor̃ & cattallorum quæ fuerunt infranominat' M. K. unde ipſos aut eorum aliquem diſtringere poſſum.

Aliter. Baroñ infraſc' certifico, quod A. B. C. D. et cæteri perſonæ in quibuſdam ſcedulis huic brevi annex' nominat', nulla habent bona ſeu catall' infra ballivam meam unde ſeperalia debita ſuper eos onerat', ſeu aliquem inde parcell', fieri facere poſſum. Nec ſunt invent' nec eorum aliquis eſt inven' in balliva mea; Nec ſunt aliqui exec' teſt' ſive ultimæ voluntat. predict. ſeperalium perſonarum neque adminiſtrat' bonorum et catallorum quæ ſua fuerunt, nec aliqui hæred̃ ſeu tenen' terr̃ prædict. ſeparal' perſonar̃ ſive eorum aliq. infra ballivam meam quæ diſtringere poſſum, prout iſtud breve in ſe exigit et requirit.

Reſiduum executionis iſtius brevis patet in quibuſdam Inquiſitionibus huic brevi annex'

A. B. Armig. Vic.

Nihil. Inquiſitio Indent. &c. Qui dicunt ſup ſacram̃ ſuum, quod A. B. C. D. &c. in ſced huic brevi annex' nomiñ ſeperal' diebus et annis quibus primo debitor̃ devener' dño Regi, ſeu unquam poſtea hucuſq; null' habuer' bona ſeu catalla terr' ſive tenem̃ infra ballivam meam quæ extendi aut appræc' poſſint ad eorum noticiam. Et quod mortui ſunt, quibus die et anno ſive diebus et annis, ac ubi penitus ignorant. In cujus rei teſtimonium, &c. ut antea.

A. B. Armig. Vic'

Baroñ infraſcript' certifico quod P. M. I. S. et T. W. in ſcedula huic brevi annex' nominat', nulla habent bona ſeu catalla, terr' ſive tenem̃,

tenem̃, infra ballivam meam unde ſeparalia debit ſuper ipſos et eorum cujuſlibet imponit' fieri facere poſſum: ſed virtute iſtius brevis mihi direct' fieri feci de bonis et catall' H. L. T. K. et I. B. in dict' ſcedula nominat' ſeparal' ſummas ſuper ipſos & eorum quilibet onerat', et denarios ill' eorum Baron̄ infraſcript' ad diem et locum infracontent' parat' habeo, prout interius mihi præcipitur. Et ulterius certifico quod I. B. E. A. et W. B. in dicta ſcedula nominat' ſe habere exoneraciones p̄ ſeparal' ſummis ſuper ipſos & eorum quemlibet onerat, et pro eo accepi ab eis ſufficien̄ ſecuritat', et prefixi eis diem eſſendi hic ad Scaccarium dn̄i Regis infraſcr' ad diem & locum infracontent', prout interius mihi præcipitur.

A. B. Armig. Vic.

Return' brevis, de Quis eſt tenens

VIrtute iſtius brevis mihi directi Baron̄ infraſcript' certifico, q. W. B. et M. uxor ejus ſunt tenentes tertiæ partis manerii infraſcript' in tres partes dividendum et C. A. M. E. et I. B. filiæ C. D. defunct', ſunt tenen̄ ſecundæ partis manerii pred, in tres partes dividendum, et tertia pars manerii pred remanet in cuſtodia dn̄i Regis, ratione minoris ætatis P. D. fil' et hæred prædict' C. D. *Quis eſt tenens.*

Manucapt' prænominat' W. B. et M. uxor ejus { *Jo. Doe.* *Rich. Roe.*

A. B. Armig. Vic.

Infranominat. W. B. et uxor ejus ſunt tenentes tertiæ partis manerii infraſc. in tres partes diviſas: Et C. A. M. E. et I. B. filiæ C. D. defuncti ſunt tenentes ſecundæ partis manerii infraſcr. in tres partes diviſas, et alia tertia pars manerii infraſcript', remanet in manu dn̄i Regis ratione minor' etatis I. B. filii et hered pred' C. D. *Aliter.*

Manuc. prenominat. W. B. et M. uxor. ejus I. D. R. R.

Return' de venire fac' extra Scaccarium.

Et ceo ſemble deſtre verſus lofficers del Corone, vel Scaccarii, & eſt in nature de Summons.

INfranominatus A. B. Nichil habet in balliva mea, p̄ quod poteſt Attachiari, vel ubi eum ſum̄ poſſum. *Venire fas.*

Infranom̄ A. B. attachiat. { *J. F.* eſt p̄ pleg. viz. { *R. D.* *Aliter* ſcz. *lou eſt ſuffic.*

A. B. Armig. Vic.

Exitus eorum, dim̄ marc.

Et ulterius, ſi hæc verba recitantur in brevi (necnon ad oſtendendum) tunc in quovis ux. s. *Si ſoit Comes aut Comitiſſa tunc ſic.*

Infranominat' R. A. nichil habet in terr. tenem̄, et hereditament. infraſcript. per q. ipſum diſtringere poſſum.

Nullum tale manerium, nec ulla terr. ſeu tenement. cognit. p̄ nomen de E. jacen̄ in comitat. C. unde tenent. inde diſtringere poſſum, prout interius mihi præcipitur. *Diſtring'.*

Retorna de fieri facias ubi null' additio datur aliis deff.

BAron̄ infraſcript' certifico quod ſunt diverſ. perſonæ in Com̄ meo nomiñ et cognominis de I. K. *viz.* I. K. de F. et I. K. de A. quod non continentur in iſto brevi, Ita q̄ de cujus pred I. K. &c. bonis et catal' denar' infraſp' fieri facer̄ Neſcio. Ideo ad execut' iſtius brevis procedere non potui.

A. B. Armig. vic.

Retorna brevis ſumm' coram Juſtic' Foreſta. Vide hic cap. 47.

Foreſta. VIrtute iſtius brevis mihi directi ſuiñ feci Archiepiſcop', Epiſcopos, Duces, Comit', Baroñ et omnes alios liberos tenent' qui terr̄ et tenement' habent infra metas foreſtæ dñi regis infraſcript', in com̄ meo; & quatuor homines, & præpoſit' de quolibet villat' infra metas ejuſdem foreſtæ, Ac etiam xij. probos & legales homines de quolibet burgo infra metas dict' foreſtæ tenend, qui venir̄ debuerūt et ſolebant, quod ſint coram Juſtic' infraſcript', ad diem et locum infracontent', prout interius mihi præcipitur. Publice etiam ꝑclam̄ feci ꝓ totam ballivam meam tam in burgis quam in aliis vill' ac in feriis, mercatis, et aliis locis publicis quod omnes ill' qui ꝓ cartam dñi regis nuno, aut anteceſſ. vel progenitor' ſuorum, aut aliquo alio modo aliquas libertates ſeu Franchefias teneant, aut libertat' habere clam̄, et quo warr̄; quod ſint coram dictis Juſtic' ad diem & locum prædict', ꝑclam̄ etiam feci quod omnes attach' ꝓ vert' aut venatione in foreſta præd poſt ultimum placit' foreſtæ prædict' tent' et eorum pleg' et manucapt' qui habuer' diem ꝓ manucaptiõ prædict' eſſend' coram præfat' Juſtic' adſtand' rect', et ad faciend' ea quæ ſecundum legem foreſtæ facere debent.

Reſiduum executiõ iſtius brevis patet in quibuſdam pannell' huic brevi annex'. Cromp. Auth. des Corts, 50.

A. B. Armig. Vic.

Anthon' B. de C. generoſ. & ſic xxiiij. for the grand Jurie; and twelve for the petie Jurie. Le Pannel.

Retorn' de venditione expon'.

Venditiõ exponas. VIrtute iſtius brevis mihi directi de die in diē venditioni expoſui illa bona & catalla ad valentiã C. s. reſiduũ de viij li. quæ nuper de bonis & catallis terris & tenūtis T. F. infranominat' cepi, & inde vendidi ad valentiam xl. s. Quos quidem quadragint' ſolidos parat' habeo ad diem & locum infracontent' ad reddend infranominat' C. D. prout interius mihi præcipitur, tunc ibidem ſolvend. Et reſiduum bonorũ & catallorum pred adhuc penes me remanent invendit' pro defectu emptorũ ſed venditioni apponam de die in diem, & quando vend contiger' denar' inde provenient' coram Baroñ infraſcript' habebo ſecundũ formam & effectum hujus brevis.

Virtute iſtius brevis mihi directi de die in diem venditioni expoſui illa bona & catalla ad valenciam C. s. reſiduũ de vij li. quæ nuper de bonis & catall', terris & tenementis T. F. infranominat' cepi et inde vendidi ad valentiam xl s. quos quidem xl s. ad diem & locum infracon- Aliter.

content' parat' habeo ad reddend infranominat' C. D. prout interius mihi præcipitur. Et reſiduum bonorum et catall' predi adhuc penes me remanent invendit' pro defectu emptorum.

Aliter. Illa bona ad valentiam viginti Marcatum infraſcript', quæ virtute brevis dñi regis nunc nuper mihi directi cepi de bonis & catallis terris & tenementis, quæ nuper fuerunt T. F. infranominat' venditioni expoſui, & vendidi, & denarios illos coram Baron infraſcript', ad diem & locum infracontent' paratos habeo prout interius mihi præcipitur.

Aliter. Baron infraſcript' certifico quod ill' C. Oves in hoc breve ſpec' venditiõ exponere non potui eo quod adhuc remanent in manus infranomin' R. N. nuper Vic' Com C. et nunquam mihi præfat' nunc Vic' adhuc per præfat' nuper Vic' deliberat' fuer. *In mains le nunc vic'*

Et vic' retor quod bona non fuerunt capta p ipſum nunc Vic': ſed p quendam T. nup Vic' Predeceſſor. &c. Ideo bona illa venditioni exponere non potuit. Fitz. pces.---- 99. Br. Retor. 15.

Aliter. Virtute, &c. Baron infraſcript' certifico q x. die A. &c. cepi de bonis & catallis terr' & tenementis infranominat' W. ad valorem, &c. Et de bonis & catal', terris & tenementis I. D. &c. ad valorem, &c. Et illa venditiõ expoſui, ad quæ nondum inveni emptores, et ideo denarios, &c. *Nondum inveni Emptores.*

A. B. & C. D. infranominati mortui fuerunt diu ante emanationem hujus brevis, Nec aliqua habere bona ſeu catalla, terras ſeu tenementa in balliva mea quæ extendi & appræciar' poſſum, prout per breve iſtud interius mihi præcipitur. *Mortui ſunt.*

Infranominat' A. B. & C. D. Mortui ſunt: Et quoad reſiduum executionis nihil per me actum eſt propter temporis brevitatem. *Nihil fact' propter temp' brevit.*

Retorn' de Scire fac'.

VIrtute, &c. Scire feci I. C. infranominat' quod ſit coram Baron infraſcr' ad diem & locum infracontent' per I. S. & R. S. probos & legales homines de balliva mea, prout interius mihi præcipitur.

Aliter. I. C. & cæteri deff. infranominat' Nihil habent in balliva mea per quod eis Scire facere poſſum.

Aliter. Nulli ſunt executor de E. infraſcript', neque adminiſtr' bonorum & cattallorum que fuerunt ejuſdem E. nec hæred neque tenent' terrar' & tenement' quæ ſua fuer', in balliva mea, quibus aliquo modo Scire facere poſſum. Plus hic Cap. 75.

Nota que le Summons del Eſchequer eſt un Scire facias.

Retorn' brevis Collect' xv & x extra Scaccarium.

VIrtute iſtius brevis mihi directi, Scire feci infranom A. B. ac etiam quæ ex parte domini Regis fierint dedi in mandat' q prædict' A. B. circa levationem & collectionem ſextæ quintedecimæ & decimæ ſex integrar' quintedecimar' & decimar' infraſcr'. Ac obligac' ſecundum formam ſtat infraſcript' predict' A. B. oſtendi feci ipſum ex parte domini regis ſigillandũ & ut factum ſuum ad uſum ejuſdem domini regis deliberand *ſcz.* dedi in mandat', ſed predict' A. B. omnino eand ſigillare, vel circa collect' predict' intendere recuſavit, & adhuc recuſat, in contemptu dict' domini regis, Ideo eandem obligationem ad diem et locum infracontent' habere non poſſum prout interius mihi precipitur. Et ulterius certifico quod Scire feci infranominat' C. D. quod ipſe circa levacionem et collectionem dict' ſexte quintedecimæ & decimæ predict' ſex integrarum quintarum decimarũ infraſcript' diligenter intendat, Et obligationem ſecundam formam ſtatuti infraſcript' ab *Collect' xv.*

eodem

eodem C. D. recepi, & eandem in Scaccar' dicti domini Regis ad diem infracontent' certifico, prout interius mihi præcipitur.

A. B. Armig' vic'.

Retorn' brevis de respit' homag' al Distringas in Scaccario.

Resp. homag. Manucaptores infrañ *A. B.* { *Io. D.* / *R. Ro.*

Exitus ——— xx s. or according to the value of the Land more or lesse.

A. B. Ar'. vic.

Quando aliquis ostend' vic' tall' sua.

Ostendit tall' VIrtute istius brevis mihi directi Baroñ infrascript' certifico, quod firmar' infranominat' post receptionem hujus brevis mihi ostend' tall' sua, de solutione firmæ suæ interius specific', ob quod præfixi eis diem essendi coram Baroñ infrascr', ad faciend' & recipiend' super tallia præd' juxta tenorem hujus brevis, Et ideo levatio sum interius specific' supersed', prout interius mihi præcipitur.

A. B. Armig. Vic.

Retorn' brevis ad proclam' vic' ad reddend' compotum suum, per Coronatores.

Proclam' vic' ad Redd' compotum. VIrtute istius brevis nobis directi Baroñ infrascript' certificamus, quod in plena com' C. infrascript' tent. apud castrum C. in comitatu C. præd' vicesimo die A. anno &c. infrascript', ac etiam in pleno comitatu prædict. apud C. præd' decimo octavo die Septembr' anno, &c. Necnon diversis vicibus postea in comitatu præd' articulatim proclamari fecimus omnia & singula articula quæ in isto brevi continent' & specificant', prout per breve istud nobis interius præcipitur.

I. W. } Coroñ.
W. R. }

Inquisitio. Inquisitio, &c. Qui dicunt super sacrament' suum, quod quibus die & anno nuper comes H. obiit, & ubi penitus ignorant, quodq; ipse nulla bona aut catalla in Com' præd' quæ capi & in manus dicti dom' regis extend' possunt: Et ulter' dicunt q; præd' Comes *H.* die quo obiit fuit seisit' in dominio suo ut de feodo, de & in manerio de C. cum pertiñ clari annui valor in omnibus ext' ult' repris xxv l. q; quidem maner. cum pertiñ ante advent' istius brevis ego præf. Vic' virtute alter' brevis extra hanc cur' emanent' & ex parte rememor' dict' dñi regis hujus Scaccarii affilat', seisir' feci in manus dicti dñi reg' per extent' præd', In cujus rei testimoñ, &c. Cantebr.

Alias. Vicar' infrasc' cum pertiñ, in manus dicti dñi reg' existit, sede Episcop. Elienſ. modo vocante.

Alias. Quod maner', terr', & tenta nuper D. dñi de la Warr', in manus dicti dñi regis existunt, eo q; *T. W.* miles modo dñus de la Warr', filius

&

& hæres præd D. non profecut' eſt liberationẽ ſuã extra cur. dicti dñi Reg. wardor. & liberac. In cujus teſtimoñ, &c.

Inquiſitio, &c. Qui dicunt ſuper ſacram̃ ſuum q. *W. F.* in ſcedul. brevi præd annex' nominat' mortuus eſt, ſed quibus die & anno aut ubi penitus ignorant, quodque *W. M.* etiam in eadem ſcedula nominat' eſt reſidens in London, & *I. S.* eſt comorans apud B. in com̃ C. & *R. A.* in vill' & com̃ H. extra com̃ C. & reliqui perſoñ in eadem ſcedula nominat' ita vagrant et diſcurrunt in com̃ præd q. capi et arreſtar' non poſſunt. In cujus rei teſtimoniũ, &c. *Inquiſitio.*

Inquiſitio, &c. Qui dicunt ſuper ſacram̃ ſuum q. *H. S.* in ſcedul' huic brevi annex' ſpec' nulla alia ſive plura habet maneria, terr', neq; tenta in com̃ præd præter et ultra man̄, terr', & tenta in ſcedul' brevi præd annex' ſpec' extend', aut quæ in manus dñi Regis ſeiſiri poſſunt. In cujus rei teſtim̃, &c.

Inquiſitio, &c. Qui dicunt ſuper ſacrament' ſuum, q. *I. W.* in brevi præd nominat' die captionis hujus inquiſitionis fuit poſſeſſionat' de quadam dimiſſione pro termino viginti annorum unius meſſuag', &c. in A. in com̃ præd cum pertinen̄ annui valoris in omnibus exit' ultra repriſ. 4. l. quam quidem dimiſſionem ego præf. vic' die captionis hujus inquiſitionis cepi in manus dicti dñi Reg. In cujus teſtimoñ, &c.

CAP. 83.

Retorna brevis extra Cur' Wardorũ & Liberationũ.

POſt receptionem iſtius brevis, & ante retorn̄ ejuſdem ſeperales denar. ſummæ infraſcript. ſolutæ fuerunt p̄ ſeperales perſonas infranominat. receptori domini Regis cur' ſua wardorum et liberationum: Ideo ad executionem ejuſdem brevis procedere non potui prout interius mihi præcipitur.

A. B. At' Vic.

CAP. 84.

Retorne del vic. ſur Precept del Juſtic. de Peace, direct al vic, pour Enquirer de Riott, ou forcible Entree, &c.

VIrtute iſtius Precepti mihi directi, venire feci coram Juſtic. infraſcriptis, ad diem et locum infracontent. xxiij. p̄bos, ſufficientes, et legales homines de Balliva mea, ut interius mihi præcipitur.

Reſiduum executionis iſtius præcepti patet in quadam ſcedula huic warranto añexat.

A. B. Armig. Vic.

Scedula. Canteb. Nomina Jurator. ad inquirend̄ pro dño Rege de quibuſdam illicitis aggregationibus et Riottis, &c. apud Abb. magna commiſſis, Summoñ ad eſſend̄ coram Juſtic. dñi Regis apud Lynton (in Com̃ præd. 23. die April. (Anno dñi 1623) ſecundum exigent. cujuſdam warranti huic ſchedulæ añexat.

And

And then underneath write down the names of the 24 thus:

Tho. B. de Lynton.
R. B. do eadem.
J. P. de H.
Et sic de cæteris, ad numerum de 24.

Quilibet Jurator. præd. separatim { *Johem Doo.* / p se attachiat. est p pleg. { *Rico Roo.*

Exitus eorum cujuslibet xx. s.

A. B. Arm. Vic.

Returns concerning the old Sheriff.

Cap. Utlag. ANte adventum istius brevis, I.C. miles nuper vic. com C. infranominat. T.D. cepit & in prisona dñi Regis penes se detinuit virtute cujusdam brevis dñi Regis dicto nuper vic. direct', quem quidem T.D. dictus nuper vic. una cum dicto brevi ei directo, mihi I.D. milit. nunc vic. com præd. in ejus exitu ab officio suo deliberavit, cujus quidem corpus, ac breve dicto nuper vic. direct' Ego præfat' nunc vic. coram Justic. infrascript. ad diem et locum infracontent. parat. habeo, ad faciend et recipiend quod dictum breve in se exigit et requirit.

Testific. rei nuper vic. Istud breve prout superius indorsat. simul cum Inquisic. huic brevi annex. vj. die *Ma.* anno regni dñi Regis, &c. liberat. fuit mihi A. B. Ar. Vic. Canteb. infrascr. per *Jo.C.* milit. nuper vic. com prædict. prædecessoris mei, in ejus exitu at officio suo.

Ceo darein Return' coviet este escri en Romaine letters.

REtorn ad proclamand vic. ad redd Compotum: See hic antea *Return' de proces hors del Escheqer.* cap. 82.

Retorn de Captus *per derein vic.* et minime deliberat. in exitu ab officio: See hic antea *Retor. de Habeas Corpus.* cap 63.

Retorn de exigent inter duos vicecom: Vide hic antea *Return' de Exigent.* cap. 59.

Retorne, que les biens (destre vend) remayne in les mains del annc. vic. hic fol. 117.

CAP. 85.

Return of Juries.

IUries are of two sorts, sc. for Enquiry, or for Trial.

Of the first sort are, Grand Juries returned to the (Assises) or generall Goale delivery; or for the Quarter Sessions of the Peace.

Of this sort also are, the Juries returned before Justices of Peace, to Enquire of Riotts, and Forcible Entries, &c. And Jurors returned before Escheatours, or before Commissioners of Sewers, or upon the Stat. of Bankrupts, Coroners, and Clerks of the Market, &c.

And so of Inquisitions taken before the Sheriff.

Jurors for Trial, are such as are returned when a matter is in tryal between party and party.

The

The Sheriff (upon a Precept directed to him) is to ſummon (or warn by his Bayliffs) and to return (or to cauſe to be ſummoned and returned) the Graud Jury to the Aſſiſes; the form whereof ſee antea cap. 46. *For the Aſſiſes.*

The Sheriff is likewiſe to ſummon (or warn) and to return the Juries for the Quarter Seſſions; the form whereof ſee alſo antea cap. 47. *For the Seſſions.*

The Sheriff is likewiſe to Summon (or warn) and to return, Juries for Enquiry, before Juſtices of Peace, out of their Seſſions) and before Commiſſioners, Eſcheators, Coroners, and Clerks of the Market, upon their ſeveral Precepts directed to the Sheriff for that purpoſe. See hic cap. 83. & 100.

42. E. 3. c. 11. 6. H. 6. c. 2. Sheriffs ought to array their pannels for the ſpecial Aſſiſes ſix dayes (at leaſt) before the Seſſions of the Juſtices, upon pain of forty pound: ſo that the parties plaintiffs, tenants, or defendants may have the view and copies of the pannels, if they ſhall demand the ſame. *For Trial.* *Copies of Pannels.*

Pannel here ſignifieth a little part of parchment wherein the Jurors Names be written and annexed to the writ: And a Jury is ſaid to be impannelled, when the Sheriff hath entred their Names into the pannel or piece of parchment. Co. L. 158. b.

Mez ceo neſt que un peyne al vic. que ſerra levy per ſuite &c. Sed *neſt aſcun cauſe de Challenge le Array, &c.* Abr. d'aſſs. 131, 132.

Nota, *Que ceo parol Array, eſt le diſpoſing ou ordering dun Jury.*

And theſe copies of pannels ſhall be indented by the Sheriff, and delivered to the plaintiffs, tenants, and defendants (upon their demand) ſix dayes at leaſt, before the Seſſions, upon pain to forfeit to the King, forty pound for every default. 6. H. 6. cap. 2. *Et le party auxi recovera ſes damages.* Abr. d'aſſ. 132.

Ceo auxi ſemble ſrq; un peyne al vic., &c. Et que ſuffiſt de arrayer le Pannell d'aſſiſe 2. jours avant les aſſiſes; Et pour deliver Coppies del Pannels 4 jours avant les aſſiſes, Eo que les dit Stat. ſont in l'affirmative, &c. 43. aſſ. pl. 22. Vide Br. Panel. 10. *que cheſcun array in Aſſiſe coviet eſtre fait 4. jours devant.*

Ibid. Alſo the Bailiffs of Franchiſes and Liberties ought to make their returns to the Sheriff (of the names of ſuch perſons as are to be ſo impannelled) eight dayes (at leaſt) before ſuch ſpecial Seſſions or Aſſiſes, upon pain of forty pound to be forfeited to the King for every default.

Mr. Forteſcue ſpeaking hereof ſaith thus. So ſoon as Suters in the Kings Courts are at iſſue upon the matter of the fact, the Juſtices (by the Kings Writ directed to the Sheriff of the County wherein the fact is ſuppoſed to be done) do command the Sheriff to cauſe to come before the ſame Juſtices, at a day certain by them limited, viz. good and lawful men, Neighbours to the place where the fact is ſuppoſed to be done: And upon the day aforeſaid the Sheriff ought to return the ſame Writ before the ſame Juſtices, with the Pannel of their Names, whom he hath ſummoned thereto.

Alſo of thoſe viz. ſome of them ſhall be Hundreders (or of the Hundred wherein the Town is, in which the fact whereupon the ſute ariſeth, is ſuppoſed to be done) Forteſc. Now how many of them muſt be Hundreders, ſee hic poſtea.

11. H. 4. c. 9. Jurors in inditements ſhall be lawful and liege-men, &c. and not of perſons named by the Juſtices, but ſuch as ſhall be returned by the Sheriff, or Bailiffs of Franchiſes, without any denomination to the Sheriff or Bailiffs before made, by any perſon of the names, which by him or them ſhould be impannelled (except it be by the officers of the ſaid Sheriff or Bailiffs, ſworn and known to make the ſame, and other officers to whom it appertaineth to make the ſame according to Law:) And if any inditement be made (or taken) in any point to the contrary, *Sans denomination.*

trary, the ſame inditement ſhall be alſo void, revoked, and for ever holden for none.

Alſo if any perſon ſhall be returned or put in any Enqueſt, at the denomination of any other, or to ſerve any turn, &c. if it may ſo appear to the Court, they ought to remove him, although otherwiſe his preſentment might be good. Crompt. 128.

Vide 12. E. 3. *Abr. d'aſſ.* 51, 52. *In aſsiſe parcel del Jury fuit miſe in le Pannel al preier del Plt, & aſcuns al denomination le tenant; Et por ceo que ils ſeē al vic. deſtre probes & loyall hoēs & nul faver tro. in le vic. ilz fuer allow.*

Auxi vide Dyer 182. *Jurors impoſe al denominatiō del Plt, peut eſtre challenge* (ſc. *les pols peut eſtre Chall.*) *per le deff.*

Whereas divers great inconveniencies have heretofore bēn, by reaſon that Sheriffs and their miniſters have returned at the Aſſiſes and Seſſions of the Peace, the names of ſuch perſons as by labour would be wilfully forſworn and perjured, by reaſon whereof divers perſons have bēn wrongfully indited of murthers, felonies, and other miſdemeaners; And ſometimes divers great felons and murders have bēn concealed and not preſented, &c. Therefore by the Statute made 3. H. 8. c. 12. It is enacted, that all pannels returned, which be not at the ſute of any party, that ſhall be made and put in by the ſheriff or his officers, before any Juſtices of Gaole delivery, or before Juſtices of the Peace in their open Seſſions, to inquire for the King, may be reformed, by putting to, and taking out of names of the perſons that be ſo impannelled, by the diſcretion of the Juſtices, before whom ſuch pannels ſhall be returned: And that the ſame Juſtice or Juſtices ſhall command every ſheriff, and their miniſters (in his abſence) to put other perſons in the ſame pannels by their diſcretions: And the ſame pannels ſo reformed by the ſaid Juſtices to be good and lawful. And if any Sheriff or miniſter do not return the ſame pannels ſo reformed, then every Sheriff or miniſter ſo offending ſhall forfeit twenty pound for every ſuch offence, the one half thereof to be to the King, and the other half to him that will ſue for the ſame. And ſo of pannels for Trial, upon a Tales de Circumſtantibus granted by the Juſtices. Sēe hic cap. 90.

Reforme per les Juſtices.

Whereas before (by the ſtatute of 13. E. 1. c. 30.) none were to be put in, or upon any Jurie, other than thoſe that were ſummoned to the ſame at the firſt.

Niēt Sūmō. And if the Sheriff ſhall return any Juror which was not lawfully ſummoned, warned, or diſtrayned in that behalf, and that ſuch perſon (for default of his appearance) ſhall loſe or forfeit any iſſues, then the ſheriff (or his miniſter, by whoſe default ſuch perſon ſhall be returned ſummoned) ſhall forfeit to the party ſo returned, double the value of the iſſues by ſuch Juror loſt or forfeited for his default of appearance. 27. Eliz. c. 6.

En aſsiſe les Jurors gage lour Ley, que ilz ne fuer Summon; mz ſemble que il neſt Ley. Vide H. 3. c. 3. Abr. d'aſſ. 115.

En aſsiſe le tenant dit que les gentz empannels ne fuer Summō; & les Jurors meſmes fuer ſur ceo examin, mz nēy ſur Serement. Abr. d'aſſ. fol. 131. 22. aſſ.

Si le vic. au bayliff Summon aſcun deſtre del Jury, Et niet ob. le vic. ne retorne eux, uncor pour deſt d'apparāz de ſuffic Jurors, ſi le Plt. teſtmoigne que aſcun de eux qeux fuer iſsint Summon, ſont in le ville, &c. ceo peut eſtre trove per Serement del Bayliff ſc. *que ilz fuer Summon*) *& ſur ceo ilz ſeront jurus, niet ob. que ils ne fuer retorne.* Abr. d'aſſ. 132.

Si le vic. ou ſon Bayliff Summon (ou warne) *aſcun deſtre del Jury, & apres le vic. ne retorne eux iſsint Summon, le vic. ſerra amerce.*

Note

Note, the law requireth that Sheriffs, and other officers, ſhall be indifferent perſons of themſelves, and ſhall deal uprightly in returning of Jurors for trials, and therefore the law doth not allow that Sheriff, undersheriff, Bayliff of franchiſe, coroner, or other perſon, as indifferent or meet to impanel any Jury or Juror who is a (a) party to the ſute or matter in queſtion; or who doth (b) maintain either of the parties, plaintiff, or defendant, in the ſame ſute, or is of (c) counſel with either of them in that ſute then in iſſue; Nor who is within the (d) diſtreſſe, or (e) receiveth the yearly fee, or weareth the livery or robe of any of the parties to that ſute; (f) Nor who is of kindred by nature, or of affinity by marriage, to any of the parties to that ſute; Nor who doth return that enqueſt, or any of the Jurors therein, at the denomination, (g) or by procurement of any of the parties to the ſame ſute, or of any other perſon whatſoever; Nor who doth impannel that enqueſt, or any of the Jurors therein, for the (h) favour which he doth bear more to the one party than to the other; nor who was an (i) arbitrator in that cauſe in queſtion, and to be in trial, and did treat and conſer of the ſame; Nor who is then (k) in ſute of law with either of the parties to this queſtion or trial for any matter of treſpas, malice, or evill will; (l) Nor who did baptize the child of any of the parties to this ſute and trial, or any of the parties to the ſame ſute did baptize his child: All which the law doth take as cauſes of ſuſpicion of favour and affection in the Sheriff, his undersheriff, or other officers; and to be movers to perjury, and therefore upon challenge of the array ſo being impanneled, and the ſame proved, the whole array ſhall be quaſhed.

Partiality del vicount

Causes of challenge.

Challenge.
a Br. 88. 89.
b Br. 103.
c Br. 156.
d Br. 9. 121. 158.
e Br. 24. 29. 52. 95. 96. 119.
f Br. 1. 20. 53. 101. 116. 180.
g Dyer 182. Br. 25. 36. 184.
h Br. 55. 90. 93. 120. 184. 197.
i Br. 7. 85. 157.
k Br. 45. 52.
l Br. 31. 56. 143. 163.

Vide Co. L. 157. 158. *plus Concernent Challenges.*

Nota, *que les Challenges ſont fait, ou al Array, ou a les Polles;*

Touts tiels ſont deſtre tryes per aſcun des Jurors uncor ſi ſait devant aſcun Jurors jures donqs le Court aſsigner Triors, mz. quant aſcun Jurors ſons jures, donqs ils tryer. 27. H. 8. 26. b. Finch, 60, a.

Challenge al Array eſt quant le Jury neſt indifferentment impannel; donq; Challenge ou Exception eſt priſe al Entire nomber.

Challenge al Polle, eſt quant exception eſt priſe, al aſcun un, ou pluſours, come nient indifferent.

Array duement fait tempore arraiamenti, *ne ſerra quaſh, coment apres aſcun del eux fuer omiſe, & auters returne (per eſtre) que ne ſont indifferent, &c.* Dyer 182. *mz. les Polles poent eſtre challenge in tiel Caſe.* Ibid.

And further, to the end and intent that all trials might be by indifferent Jurors, therefore the laws and ſtatutes of this Realm have provided, That no Sheriff or Bayliff ſhall impannel any enqueſt, nor put into any Jury, any perſons but ſuch as are next neighbours, and which have beſt knowledge of the truth, moſt ſufficient and moſt ſubſtantial people, and worthy of credit, and not ſuſpected, nor procured, nor laboured: And he that doth otherwiſe, and is attainted thereupon, ſhall pay unto the plaintiff his damages double, and ſhall be grievouſly amerced to the King: and beſides the Sheriff ſtands bound thus to do by his oath: Artic. 14.

What manner of perſons.

18. E. 1. c. 9.
34. E. 3. c. 4.
42. E. 3. c. 11.

Note, that the High Sheriff by his Oath muſt make the Pannels himſelf, and that aſwel for Enquiry as for Trial.

Note alſo, that in writs of Aſſiſe (*de Novel deſſein, de Mortdaunc. de Darein preſentement*, et de juris utrum.) the Sheriff is to return the Jury the firſt day, and they are to appear as ſoon as the defendant: But in other original writs (regularly) no Jury is to be returned before the appearance of the parties, and an iſſue joyned between them.

Co. L. 159.

If the Sheriff or Bailiff of a liberty ſhall return a Jury contrary to the form of theſe Statutes, the parties plaintiff, and defendant, may have their action upon the Statute againſt the Sheriff or Bailiff, &c. For that the ſtatute is a prohibition it ſelf; or the party plaintiff may have a Writ, de non ponendis in Aſſiſis, &c. (founded upon this ſtatute) directed to the ſheriff, commanding him to return a pannel according to theſe ſtatutes (and if the Sheriff will not do accordingly, the Plaintiff may have an attachment againſt the Sheriff, therefore ſee the form of this Writ, De non ponendis in Aſſiſis: Regiſter 178. & Fitz. 165.

Alſo if the Sheriff, &c. ſhall return upon a Jury any perſons which are not ſufficient to paſſe in the ſame action, &c. then ſuch Jurors may have an action upon the Statute againſt the Sheriff. Fitz. 166. d.

Nul Officer del Vicount. No ſheriff, bailiff of liberty, nor any other officer, ſhall return in any pannel or Jury, any bailiffs, officers, or ſervants, to any Sheriff, under-ſheriff, coroner, ſteward of franchiſe, warden of priſons, or other of their officers, upon pain to forfeit forty pound, the one half to the King, the other half to him that will ſue for the ſame. 23. H. 6. 10.

Uncore ſi le Vicount empanel ſes amyes, & coſins, il ne deins ceſt ſtat. per Eliot 21. H. 7. fol. 36. a.

Barons. Barons and Peers of the Realm ſhall not be impanelled or returned upon Juries by the ſheriff, &c. when any ſubject (of the Commons) is to have a trial, either at the Kings ſute, or betweæn party and party. Co. L. 156. b. Fitz. 165. & Co. 6. 53. & Co. 9. 49. Dyer. 315. Co. L. 156. b. Doct. & St. 15.

But every Baron of the Parliament (alwell of the ſpiritualty, as temporalty) being a party to any action, ought to have Knights returned of their Jury one at leaſt. Fitz. Enqueſt 43. Co. 6. 53, 54. & Plo. 117. Vide 33. H. 8. Br. Jurors 48. & 27. H. 8. Br. Enqueſt 99. Dyer. 107. 208. & Finch. 60. And ſo in an Atteynt there ought to be a Knight returned of the Jury. Co. L. 156. Fitz. Atteynt. 69.

Auxi Peere del Realme ſerra trye in appeale, per Chivalers, &c. & nëy per Pares ſuos. Eo que eſt ſuite le party. Autrement eſt ſur Enditement de Treaſon ou Felony, la ſerra trye par Pares, pour ceo que eſt ſuite le Roy; Mez ceo ſerra intend de Seigneurs de Parliament, & que ſont temporal Seigneurs, & nëy de Eſpirit. Seigneurs; car Eveſq; (que eſt Seigneur del Parliament) ſerra trye come autres gents ſerra, ſc. per Chevalers, Eſquiers, & Gentlehoës, pour ceo que Eveſq; neſt Seigneur mz per reaſon de ſon Eveſcherye. Br. Coro. 153. Treaſon 2. & 29. Trial. 142. & Stamf. 152.

Clerks. Clerks which have lands or tenements by deſcent, or by purchaſe, may be impannelled, returned and ſworn upon Juries, alwel as other lay perſons (except when they be in the Kings ſervice,) but this is now out of uſe. Fitz. 166. b.

Mez ſi le vicount retorne aſcun ſeignior ſur Jurie, ſil ne appeare, il perd' ſer iſſues retorne, &c. Fitz. 163. a. Finch. fol. 60.

Iſſint ſi le vicount impannel & retorne aſcun Clerke, il covient appeare, &c. autrement il perd' ſes iſſues, &c. Fitz. 166. b.

Tenant in ancient demeſne. Tenants in ancient Demeſne (which are dwelling there) ſhall not be returned by the ſheriff in any pannel for their lands within ancient Demeſne: but for their other lands or tenements which they have out of ancient Demeſne, it ſeems they may be impannelled and returned by the Sheriff. Fitz. 166. f. Co. 5. 105.

Foreſters. Foreſters, Verdors, Regardors, Agiſtors, nor other miniſters of the Foreſt, the ſheriff ought not to impannel or return any of them upon any Jury or Inquiſition to be taken out of the ſame Foreſt. Fitz. 167. a. 34. E. 1.

Coroners

Fitz. 167. a. Coroners of the Countie, the Sheriff ought not to return them upon any Jury, or Inquisition: but upon Inquisitions to be made within their Countie before Commissioners, or Justices of peace, the Sheriff may return Coroners. *Coroners.*

Fitz. 165. d. 166. a. d. Persons above the age of seventie years are not to be returned by the Sheriff or Bailiff of liberties upon Juries; Nor persons being continually sick, or having any continual infirmity, or being diseased at the time of their summons. Stat. Westm. 2. cap. 38. *Aged persons.*

Uncour si le Vic. retorne persons Decrepite, ou persons ouster le age de lxx. ans, ou auter tielz, quant ilz veigne al Barr d'estre jure, ils n'avera nye advantage d'alleger que ilz sont Decrepite, ou ouster le age de lxx. ans, &c. Nec serra ilz excuse pur non appearing, si les Justices voile exact lour service. Lbt. 383.

No Alien, Enfant under fourteen years of age, Clergy-men, or Ministers shall be impannelled. Lambr. 382. *Alien. Enfant. Minister.*

And yet an Enfant above fourteen years of age, ought not to be returned (by the Sheriff) upon any Jury; Nor appearing) ought to be impannelled and sworn upon any Jury. For Mr. Littleton (div. 259.) tells us, that before xxj. years of age a man shall not be sworn upon any Enquest or Jury; *Et ceo semble bon Challenge par le Common Ley; mes le party n'ad ascun remedy pur ceo Stat. de Westm. 2.*

Fitz. 165. d. & 166. d. No persons dwelling in another Countie at the time of the summon, shall be returned upon any Jury: But this Statute shall not extend to great Assises, in which it behooveth many times Knights to passe, although they be not resident in the Countrey (for the scarcitie of Knights) so that they have land within the Shire. Westm. 2. cap. 38. *Hors del Countie.*

Fitz. 165. b. 166. d. And every of these persons abovenamed may have their Writ to the Sheriff, commanding him that he shall not impannel them: Or (without any such Writ suing) they may have their action upon the said Statute of Westm. 2. against the Sheriff, wherein the partie grieved shall recover his damages, and the Sheriff shall also be amerced to the King: Se 8. E. 3. fol. 30. & Regist. 179. &c.

But yet they which doe purchase Charters of exemption and libertie, not to be impannelled) in Assises, Juries, and Enquests) if their oaths be so requisite, that without them Justice cannot be ministred (as in great Assises, perambulations, and in deeds or writings of covenants, where they be named for witnesses, or in attaints, and in other like cases) they shall be compelled to swear, saving to them at another time their foresaid libertie and exemption, Marlb. 52. Hen. 3. 14.

Note, that he which hath a Charter of Exemption, &c. ought to shew the same to the Sheriff; and if then the Sheriff shall impannel him against the words of his Charter, then he may have his action against the Sheriff. 18. H. 8. fol. 5. b. et 30. Eliz. If the Sheriff shall return before Justices of Oyer and termin. Justices of Gaole-delivery, or Justices of Peace, a Pannel de Corpore Comitatus (sc. the great Enquest) to enquire for the King, and some of them have their Charter of Exemption, yet if in their said Charter, there be not this clause, Licet tangat nos, & hæredes nostros, they may be compelled to be sworn, for that the businesse and service concerns the King. Vide 72. ass. 5. And for want of those (or the like) words in their Charter, it seemeth also the Sheriff may safely impannel, and Return them, for such services for the King. Cromp. 128.

Also where an Alien is partie to any trial the Enquest shall be de medietate linguæ: 28. E. 3. cap. 13. *Alien.*

No Indictor shall be put in Enquests upon deliverance of the Inditees of felonie or trespasse, if he be challenged for the same cause by him which is indicted: 25. E. 3. 3.

No

No indictments ſhall be made by any perſons which be outlawed, or which have fled to Sanctuary for treaſon or felonie, but by enqueſt of the K. liege and lawful people. 11. H. 4. cap. 9.

Probi & legales. So that by this ſtatute of 11. H. 4. c. 9. the Sheriff is appointed to return none upon any inditement, but ſuch as are probi & legales homines: probi, ſcz. ſuch as are not diſcredited (or diſabled in their credits) in law by attainder in conſpiracie, attaint, decies tantum, perjurie, ſubornation of perjurie, concealment, or ſuch like: Legales ſcz. ſuch as are not outlawed, abjured, condemned in a Præmunire, or attained of treaſon, felony, or ſuch like.

Likewiſe Jurors warned upon trial, &c. they ought (by the Statute made 42. Ed. 3. cap. 11.) to be moſt worthy of credit, and not ſuſpected: And (by the Statutes made 35. H. 8. cap. 6. & 27. Eliz. 6.) they ought to be Liberi & legales homines. In ancient time they were twelve Knights. Co. L. 155. b.

Sr. Ed. Coke upon Littleton fol. 155. telleth us, that by the Law every Juror returned for the trial of any iſſue or cauſe; ought to have theſe three properties, viz.

1. To be dwelling moſt near to the place where the queſtion is moved, or where the lands do lye.

2. To be moſt ſufficient, both for underſtanding, and competency of Eſtate.

3. To be leaſt ſuſpitious, but one indifferent as he ſtands unſworn; and then he is accounted Liber et legalis homo, and that otherwiſe he may be challenged.

Alſo they muſt have ſufficiency of freehold in moſt caſes.

And this freehold muſt be in fee ſ. fee tayl, or for life.

It muſt be in his own Right, or right of his wife.

Although it be upon Condition it ſufficeth. Co. L. 156. b.

They muſt have freeh: in that County where the cauſe of the action ariſeth. ibm.

Kindred. Alſo the Sheriff nor his officers ſhall not do well to return or impannel wittingly upon any Jurie, any perſon who is near of kindred or affinitie to either of the parties to that ſute.

Servant. Nor any perſon who is ſervant to either of the parties.

Deins diſtr. Nor any perſon who is within the diſtreſſe of either of the parties to the ſute.

But all the whole Jury muſt neceſſarily be of the Shire; and ſome of them muſt be of the Hundred where the Land in controverſie lyeth, or where the fact is ſuppoſed to be done.

And if there be no ſuch Venue (place or town) as is laid, &c. yet if the parties do agree that there is ſuch a Venue, the Sheriff cannot return *Nul tiel venue*, but he ought to return the Pannel de Corpore Comitatus, &c. Fitz. Retor. 27.

In an action of treſpaſſe laid to be done in D. the Deft. confeſſeth that there is ſuch a town, here upon the Venire facias, the Sheriff cannot return that there is no ſuch town as D. within the ſame County, for that it were contrary to the confeſſion of the party. 3. H. 7. 12. Br. Retor. 87. Hic cap. 36.

Hundredors. Upon the tryal of any iſſue joyned in any of the Kings Courts at Weſtminſter, the Sheriff (or other miniſter to whom the making of the pannel ſhall appertein) ſhall return in every pannel upon the venire facias, ſix ſufficient hundredors (at the leaſt) if there be ſo many hundredors within the ſaid hundred where the Venue lyeth, upon pain to forfeit for every hundredor that ſhall be omitted in ſuch return of the number aforeſaid twentie ſhillings. 35. H. 8. c. 6. 3. E. 6. c. 23.

And

And yet if there had not been ſo many ſufficient Hundredors within the ſame Hundred, if there the Sheriff had returned them out of the next Hundred adjoyning, it ſeemeth to have bèn allowable. Vide 50. E. 3. fol. & Abr. d'aſſ. fol. 50. & 52. & 2. H. 4. fol.

A Juror may be challenged for that he hath nothing within the Hundred; And yet after that ſo many be ſworn of the Hundred as the Statute requireth, it ſeemeth that the reſt ſhall not be challenged in that behalf. Na. brc. 174.

But by the Statute of 27. Eliz. cap. 6. upon the trial of any iſſue joyned in any perſonal action, if two ſufficient hundredors do appear it is ſufficient, ſo as no further challenge for the hundred ſhall be admitted.

Note, that hundredors be men impannelled, or fit to be impannelled of a Jury upon any controverſie, and dwelling within the hundred where the land lyeth, which is in queſtion, &c. whereby they (by intendment of law) may have Notice de rei veritate, or better knowledge of the cauſe.

Alſo the word here before, Venue, Vicenetum (coming of this word vicinus) ſignifieth a neighbour or near place, ſc. the Sheriff, &c. ſhall return &c. ſix Hundredors, &c. if there be ſo many within the Hundred where the Venue lieth that is, within the Hundred or place where the demand is made; Or within the Hundred where the town is, in which the fact whereupon the ſute ariſeth, is ſuppoſed to be done, for that vicinus facta vicinii præſumitur ſcire (Vide Co. L. 125. & 158.)

If he hath freehold in the Hundred, though but half an Acre, it ſufficeth. Co. L. 157. Sæ Co. L. 157. a. plus & Cook hic.

And if they have nothing within the Hundred, and yet dwell within the Hundred, and have ſufficient lands out of the Hundred, the Sheriff may return them. But if they have ſufficient lands within the Hundred, and dwell out of the Hundred, it ſeemeth the Sheriff may not return ſuch. Vide P. 3. H. 6. fol. Abr. d'aſſ. fol. 53. quære tamen.

A Juror was challenged for that he was no Hundredor (or had nothing within the Hundred) at the day of the Venire fac. returned, but it appeared that he had at the day of the Return of the Diſtring' Jurator, and by Juſtice Harper and the Clerks, he was to be ſworn, but Dyer Juſtice held the contrary. Dyer. 316.

But if the Juror were a Hundredor at the Venire fac' returned, he ſhall be ſworn as a Hundredor, although that after he be returned and before he be ſworn, he ſelleth his land, or changeth his dwelling, For that by his ſelling, or removing, his Notice is not gone nor impaired. Dyer. 316.

27. Eliz. c. 7. 39. Eliz. c. 8. No Sheriff, Coroner, or other perſon to whom it ſhall appertain to make return of any Writ, ſhall return any Juror dwelling out of libertie, without the true addition of his dwelling place, or of the place of his abode (at the time of the ſaid return, or within one year next before the making of ſuch return) or ſome other addition by which the partie returned may be known, upon pain to loſe five marks to the King, and five marks to the party grieved. *Addition.*

27. Eliz. c. 7. And the Bailiffs of liberties, or their deputies, ſhall certifie and deliver under their hands to the Sheriff or his deputie, the names of all perſons within their libertie to be returned upon any Jurie, with the true addition of their dwelling place, or of the place of their abode, &c. as aforeſaid.

And the Sheriff, &c. ſhall not return any Jurors within any libertie with other addition than ſuch as ſhall be delivered to him by the Bailiff of the ſaid libertie, or his deputie, certified under his or their hands, as aforeſaid.

Alſo

Alſo no extract of iſſues againſt any Juror returned as aforeſaid, ſhall be delivered out, received, or put in ure, without ſuch addition as is put in the original Pannel or Tales wherein ſuch Juror ſhall be ſo returned. Ibid.

And no Underſheriff, Bailiff, or other officer or perſon whatſoever, ſhall collect, levie, or gather any iſſues ſo eſtreated, of any other perſon or perſons, than ſuch perſon and perſons, as by vertue of the ſaid eſtreat is of right charged or chargeable with the payment of the ſaid iſſues, upon pain that every Sheriff, Clerk, or other perſon offending contrary to the true meaning of this ſtatute, ſhall forfeit to the King five marks, and to the party grieved five marks. Ibid.

CAP. 86.

Their number. NOw to ſhew how many the Sheriff muſt return upon a Jury, note that the Writ of Venire facias (for the impannelling of Juries) runneth in this form. Rex, &c. Præcipimus, &c. quod venire facias coram, &c. duodecim liberos & legales homines, &c. And yet the Sheriff is always to warn, and muſt return 24. leſt there ſhould be wanting by reaſon of Challenges, or leſt peradventure any might be ſick, or have other juſt cauſe of abſence. Vide Co. L. 155. But in former times it ſeemeth that Sheriffs uſed to return unreaſonable numbers, to the grievance and great trouble of the people: And therefore it was enacted by the ſtatute of Weſtminſter, 2. cap. 38. which was made anno 13. Ed. 1. That in one Aſſiſe no moe ſhall be ſummoned, or returned upon a Jury, than four and twenty.

Si le vic. retorne pluſors que 24. Recognitors in Aſſiſe, ſemble le bre. abater, 8. H. 4. fol. 20. et 10. H 4. 8. *mes ceo neſt error, ne le vic. ne ſerra amerce pour ceo*, ut dicitur, *uncor ceux que ſont noſme in le Pannel apres le 24. avera lour action ſur le ſtatt. vers le Vic. come ſemble.*

Auxi ſi per tiel (on auter) retorne del vic. le bre. abater, per que le plt eſt delay de ſon ſuite; quære *ſi le plt n'avera ſon action ſur le Caſe vers le vic. pour tiel delay & prejudice a luy fait.*

Thorp ſaith that the Law was founded in this, that every Enqueſt ſhould be taken p duodecim liberos & legales homines, & non p pauciores. 41. E. 3. fol. 36.

Alſo the Sheriff at every Aſſiſes or Goale delivery, and Seſſions of the Peace, is to return 24. Jurors, out of every Hundred, for Enquiry, &c. (as it ſeemeth by the form of the Precepts) beſide 24. others, for the body of the County.

Upon a Precept directed to the Sheriff, from Juſtices of Peace (out of their Seſſions) to return before them a Jury, to enquire of any Riot, or Forcible Entrée, &c. the Sheriff ought to return 24. perſons, &c. 19. H. 7. cap. 13. & 8. H. 6. cap. 9. upon pain of xx li. to be forfeited by the Sheriff, &c.

In a writ of Atteynt, the Jury (called the Grand Jury) are 24. who are to be warned the firſt day. Old Nat. bre 111. et Co. 9. 33. & Finch. 112. And the form of the writ to the Sheriff to impannel and retorn them, is according. Fitz. 105. h.

And ſo in all other actions, ſuites, trials, or enquiries, the Sheriff upon any Precept directed to him, for returning of a Jury, he is to impannel and return xxiiij. as it ſeemeth; although the Trial, or Enquiry, may be by fewer.

The Jury in a writ of Right (called the Grand Aſſiſe) muſt be of 4. Knights (or of others in default of Knights) ſummoned and returned by the

the Sheriff: which 4. Knights, &c. are to chuſe a Jury of xij. unto them; and ſo in all there muſt be xvj. (Finch. 412.) which alſo muſt be ſummoned and returned by the Sheriff.

Alſo by the Statute of Weſtminſter, 2. cap. 13. Sheriffs in their Turns ſhall cauſe their Enquells to be made of twelve at leaſt: And this ſtatute herein ſeemeth to be in affirmance of the Common Law, For by the Common Law, if a man had been endited by fewer than by xij. the enditement had been void. What reſpect is to be given to this number of 12. See Co. L. 155.

And ſo in the County Court, if the ſute be by a Juſtices, the Trial ſhall be a verdit of xij. men.

If upon a venire facias the Sheriff ſhall return but 23. and 12. appear and give their verdict, this is Erronious. Co. 5. 36. et 37. *Mz ceo eſt remedy per le ſtatut. de Jeofayles.* Co. Ibid.

Sur iſſue joyne ſur preſcription de Common in un grand waſt, jacens in 2 Counties, *Et le Trial agard* de utroque Comitatu, *& in cheſcun Pannel* xij. tantum *fuer retorne.* Dyer 316.

Fitz. 107. a Finch. 323 & Fi. 112. And yet in a writ of Waſt, the plaintiff hath a writ to the Sheriff to enquire of the Waſt, &c. for that this is but an enquell of office, the Sheriff may inquire by the oath of ſix or eight perſons of this Waſt, and need not to take twelve perſons, by the opinion of Mr. Fitzh. 107. c. But termino Paſch. anno 7. E. 6. it was holden in ſuch Caſe, that the Enquiry ought to be by xij. in number, at the leaſt; And ſo in all other Inquiſitions or Enquiries. Yet in a writ de Ætate prbanda, ſome alſo have thought that it is not neceſſary to have the number of xij. upon the Enquell, &c. but that any number above 2 will ſerve, for that the Trial is to be by proofes. See Fitz. Livery 5. & Stamf. de prerog. 79. But the writ directed to the Sheriff to return a Jury before Commiſſioners, to enquire thereof is in this form, Rex vic. &c. Præcipimus quod Summoneas, &c. xij. prbos et legales homines, &c. And again habeas ibi nomina illorum duodecim, &c. Fitz. 257. d. e.

To appear at Weſtminſter. No Jury ſhall be compelled to appear in any of the Kings Courts at Weſtminſter, for the tryal of any iſſue in any ſute, upon any penal Law, for any offence committed above thirty miles from the City of Weſtminſter, except in caſe where the Atturney general for the time being, for ſome reaſonable cauſe in that behalf ſhewed, ſhall require the ſame to be tried at the Barre in any of the Courts of the Kings Majeſty his heirs or ſucceſſors at Weſtminſter aforeſaid, which requeſt ſhall be noted on the backſide of the Writ of diſtringas thereupon awarded, to the end the Sheriff or his Bayliff may and ſhall ſignifie the ſame to the Jury that are in ſuch caſes impanneled: 18. Eliz. 5. 27. Eliz. 10.

Spare put rewards. 27. Eliz. Cap. 6. If any Sheriff, Under-ſheriff, Sheriffs Deputies, Sheriff or Under-ſheriffs Clerk, or any Bayliff of Franchiſe ſhall receive, take, or have by him ſelf, or by any other, any ſumme of money, reward, or other profit directly or indirectly, or do take any promiſe, make any agreement or aſſent to have any ſumme of money, reward, or other profit, directly or indirectly, of any perſon or perſons for the ſparing, not warning or not returning of any perſon to be ſworn as a Juror, for the trial of any iſſue joyned or to be joyned in any of the Kings Courts aforeſaid (viz. The Kings Bench, Common Pleas, and Exchequer) or before any Juſtices: then every Sheriff, Under-ſheriff, Bayliff, &c. ſo offending ſhall forfeit for every ſuch offence five pound to the King, and I. to be recovered in any Court of Record, &c.

Vide Cromp. 128. Where two priſoners were indicted by one Will, and two others by another Will, and one by a third Will, and the Sheriff

returned one and the ſame Jury, three times, to try them, and the Juſtices allowed thereof. *Mez le evidence doit eſtre deliver al un meſme temps vers touts.* Ibidem.

CAP. 87.

The ſufficiency of Jurors.

The ſufficiency of freehold.

By the old ſtatutes none were to be put or returned in any Aſſiſes or Juries, that might not diſpend twenty ſhillings yearly in Land: and if ſuch Aſſiſes or Juries were to be taken out of the Shire, none ſhould paſſe or be returned in them, but ſuch as might diſpend forty ſhillings yearly at leaſt in lands. 13. E. 1. c. 38.

And if the Sheriff or any Bayliff of liberty ſhall offend in any point therein they ſhould yeeld the party grieved damages, and be amerced beſides to the King.

Note that forty ſhillings in thoſe days maketh at this preſent, at the leaſt vj l. of our current money, if the juſt value were taken now to the proportion of moneys. Mr. Smith de Repub. Angl. 39.

And by a later ſtatute made anno 21. Ed. 2. no Sheriff, Under-ſheriff, Bayliff of liberty, or other Officer ſhall impannel any Jurors for the trial of any matter which is to be tried out of their proper County, except ſuch Jurors may ſpend in lands and tenements five pound per annum, at the leaſt: and if they ſhall do otherwiſe, the party may have his action upon the Statute againſt the Sheriff or other Officer. Stat. 21. E. 1. De hiis qui ponendi ſunt in aſſiſis. Fitz. 166. e.

Pur trial hors del County v. li.

Deins le County xl. s.

And none ſhall be impannelled to trie any matter within the County, except they have in lands and tenements forty ſhillings per annum; and the party grieved may alſo have his action upon the Statute againſt the Officer offending herein: Fitz. N. Br. 166. e. Stat. 21. E. 1.

Touching life.

Pleas Real.

Or forty marks damages.

Alſo by the Statute of 2. H. 5. cap. 3. no perſon ſhall be admitted to paſſe in or upon any enqueſt to be taken or made between denizen and denizen, upon trial of the death of a man; nor in any enqueſt betwixt party and party, in any plea Real; nor in plea Perſonal, whereof the debt or damages declared amount to forty marks, if the ſame perſon have not Lands of the yearly value of forty ſhillings above all charges, ſo that he be challenged for that cauſe by the party, &c. See Stat. 8. H. 6. cap. 29. & Co. L. 272. 2. H. 5. 3.

De medietate linguæ.

But in all manner of enqueſts, where any alien is a party to any trial (although the King be a party) the one half of the enqueſt or Jurors ſhall be of aliens (if ſo many aliens be in the Town or place where ſuch enqueſt is to be taken, &c.) And that although ſuch aliens have not lands to the value of forty ſhillings per annum. 27. E. 3. c. 8. 28. E. 3. c. 13. 8. H. 6. c. 29.

And yet where any Egyptian ſhall be indited of any felony, the enqueſt that ſhall paſſe between the King and ſuch party ſhall be altogether of Engliſhmen: 22. H. 8. cap. 10. 1. & 2. P. & M. 4. & 5. Eliz. cap. 20.

Neither ſhall a Scotiſhman have his trial here, per medietatem linguæ, for that they are accounted ſubjects and not aliens; ſee Dyer 304. & Co. 9. fol. 117.

By the ſtatute made 35. H. 8. cap. 6. it is enacted that in every caſe where ſuch perſons as ſhould paſſe upon the trial of any iſſue (joyned in any of the Kings Courts of Record commonly holden at Weſtminſter) ought by the Law to diſpend forty ſhillings by the year of freehold for

term

term of life, That writs of Venire facias, which from thencefoꝛth ſhall be awarded and directed foꝛ the impannelling of ſuch perſons as ſhall trie the ſame iſſue, ſhall be in this foꝛm, Rex, &c. præcipimus, &c. quod venire facias coram, &c. xij. liberos & legales homines de vicineto de B. Quorum quilibet habeat quadraginta ſolidat' terr' tenement' vel reddit', per annum, ad minus, per quas rei veritas melius ſciri poterit, & qui nec, &c. (after the ancient foꝛm.) And in every caſe where it is not requiſite, that the perſons that ſhall paſſe upon the trial of any iſſue (joyned in any of the Kings Courts afoꝛeſaid) ſhall diſpend foꝛty ſhillings by the year of freehold, that then the writ of Venire facias that ſhall be awarded ſhall be made after the foꝛm afoꝛeſaid, omitting the clauſe Quorum quilibet habeat 40. s. terræ, tenement', vel reddit. per annum & minus. And that upon every ſuch writ of Venire facias that ſhall have the ſaid clauſe Quorum quilibet, &c. the Sheriff oꝛ other miniſter to whom the making of the pannel ſhall appertain, ſhall not return in any ſuch pannel any perſon, unleſſe he may diſpend foꝛty ſhillings by the year at the leaſt, of eſtate of freehold, out of ancient demeſne, and within the County where the iſſue is to be tried (and alſo ſhall return ſix ſufficient hundꝛedoꝛs at leaſt, &c.) upon pain to foꝛfeit foꝛ every perſon being returned in any ſuch pannel that cannot diſpend foꝛty ſhillings by the year (as afoꝛeſaid) twenty ſhillings. *6. Hundreders.*

27. Eliz. But after by the ſtatute made Anno 27. Eliz. cap. 6. it was enacted, that in all caſes where any Juroꝛs to be returned foꝛ the trial of any iſſue, (joyned in any of the H. Courts of the Kings Bench, Common Pleas, and the Exchequer, oꝛ befoꝛe Juſtices of Aſſiſe) by the Laws of this Realm ought to have eſtate of freehold in lands, tenements oꝛ hereditaments of the clear yearly value of foꝛty ſhillings, that in every ſuch caſe, the Juroꝛs that ſhall be returned ſhall every of them have eſtate of freehold (in lands, tenements oꝛ hereditaments) to the clear yearly value of four pounds at the leaſt, and that the writs of Venire facias, which ſhall be awarded foꝛ the impannelling of Juries in the caſes afoꝛeſaid, ſhall be in this foꝛm, Rex, &c. præcipimus, &c. quod venire fac. coram, &c. xij. liberos & legales homines de vicineto de B. Quorum quilibet habeat, quatuor libras terræ, tenemt. vel reddit' per annum ad minus, &c. And that upon every ſuch writ of Venire fac. the Sheriff oꝛ other miniſter unto whom the making of the pannel ſhall appertain, ſhall not return in any ſuch pannel any perſon unleſſe he may diſpend four pounds by the year, at the leaſt of freehold, out of ancient demeſne, within the County where the iſſue is to be tried, upon pain to foꝛfeit foꝛ every perſon being returned in any ſuch pannel that cannot diſpend four pound freehold (as afoꝛeſaid) twenty ſhillings. *4. li. per an. Venire fac.*

And in every writ of Venire facias wherein the afoꝛeſaid clauſe (Quorum quilibet habeat quatuor libras, &c. ſhall be omitted, there the Sheriff oꝛ other miniſter to whom the making of the pannel ſhall appertain, ſhall not return in any ſuch pannel, any perſon unleſſe he may diſpend ſome lands oꝛ tenements of eſtate of freehold out of ancient demeſne within the County where the iſſue is to be tried, upon pain to foꝛfeit twenty ſhillings foꝛ every perſon returned in any ſuch pannel, that cannot diſpend ſome land by the year.

35. H. 8. c. 6.
2. E. 6. c. 32.

27. El. c. 6.
35. H. 8. 6. But note, that theſe ſtatutes made Anno 35. H. 8. & 27. Eliz. do not extend to any Juries to be returned in any City oꝛ Town coꝛpoꝛate, oꝛ other Town oꝛ place priviledged to hold plea, oꝛ in the twelve ſhires of of Wales, but that there they ſhall and may be returned, as heretofoꝛe they lawfully might have been. *Corporate Towns.*

A Juroꝛ was challenged foꝛ not having ſufficient freehold, and it was found that he had nothing but certain lands which one H. had letten to

him for term of life, yeelding a certain Rent, with a clause of Reentry for default of payment thereof, and the opinion of the Book 7.H.4.fol.1. was, that for such a freehold, so defeasible, he was not to be sworn; and yet the Reversion also of the land was in the wife of the Juror; quod mirum, p Br. titulo Challenge 34.

If A. shall infeoff B. to the use of the payment of certain money (to be levyed out of this land) to the use of a third person, Now during the time of the payment of this money A. is not sufficient freeholder to passe in a Jury. Keil. 167. But here the feoffee is sufficient, for the freehold which is in him. Ibid.

If A. maketh a Lease for x. yeats, absq; aliquo reddendo, yet A. shall be a freeholder to passe upon a Jury, for the freehold which is in A. ibid.

If A. letteth his lands for years, the Remainder to B. in fee, here B. may passe upon a Jury, for the freehold which is in him (in Rem.) if the the lands be of the yearly value of 40. s. ibid.

A Juror was challenged for that he had not sufficient within the Hundred the day of the Venire fac. returned, and it appeared that he had sufficient at the day of distresse, and was therefore sworn. Dyer 316.

So if he hath suffic. at the time of the pannel made, though he had not at the distresse, yet he shall be sworn. Ibid.

See plus hic cap. 92.

In Attaints. Sheriffs, Baylifs of Franchise, and Coroners ought to return in writs of Attaints in plea of land of the yearly value of forty shillings or more; and in actions of Attaint for deeds concerning land of the yearly value of forty shillings; and in personal actions of forty pound or more, such persons inhabiting within his bailiwike which can dispend twenty pound per annum, besides all charges, for term of life at least, and out of ancient demesne, and cinque ports; and if there be not sufficient persons under the degree of a Baron inhabiting within the County which can expend twenty pound per annum, then they shall impannel other persons of the most sufficient in possession of yearly value of lands under the value of twenty pound per annum, upon pain of twenty pound. 15.H.6.c.5. 18.H.6.c.2. 10 H.7.11. 21.H.7.38. Keil. 97.

20. pound per annum.

By another statute made anno 23. H. 8. where the thing in demand extendeth to forty pound (and concerneth not mans life) every of the Grand Jury that shall passe in an attaint in such case must have lands to the value of twenty marks by the year of freehold out of ancient demesne: But where the thing in demand (being a thing personal, as debt, trespasse, or the like) shall be under forty pound, it sufficeth if every person of the Grand Jury, which shall passe in the same attaint, may dispend five marks by the year of freehold land out of ancient demesne, or be worth a hundred marks in goods. 23.H.8.c.3.

20. marks.

5. marks.

Tales into another County. And if there be not persons of such sufficiency of freehold within the Shire (or place where any of the said attaints shall be taken) as may passe in the same, then one Tales shall be awarded into the Shire next adjoyning (by the discretion of the Justices before whom the same attaints shall be taken) which shall be warned to appear upon like pains as is aforesaid, and enabled to passe in the said attaints, as if they were dwelling in the shire where the same attaints shall be taken. 23.H.8.c.3.

Before Escheators. Also no Sheriff or other person upon any Writ or Precept to them directed to return before any Escheator or Commissioners, shall return any person to enquire of any lands or tenements, except such person, or others to his use, have lands or tenements of the yearly value of forty shillings above all charges, within the same shire where the enquiry shall be made, upon pain to forfeit v. l. for every Juror otherwise returned (except the same Jurors be returned before an Escheator in a City or Cor-

1.H.8.c.8. 3.H.8.c.1.

Corporate Town, or which is made by any perſon having priviledge to make Eſcheators.

And by an old Statute made anno 34. E. 3. cap. 13. ſuch Jurors returned before Eſcheators muſt be men of good fame, and dwelling in the ſame County where the inquirie ſhall be.

8. H. 6. c. 9. Upon every precept directed unto the Sheriff from Juſtices of Peace to enquire of forcible entries or detainors, the Sheriff ought to return ſufficient perſons dwelling next about the lands forcibly entred upon or detained, whereof every man to be impannelled to enquire in that behalf ſhall have freehold lands or tenements of the clear yearly value of forty ſhillings at leaſt above reprizes; and for every default herein the Sheriff ſhall forfeit twenty pound, and alſo pay a fine to the King: And yet note, that if ſuch Jurors ſhall not have lands of ſuch yearly value, yet their preſentment is good for the King, but then quære whether the party put out forcibly, &c. ſhall have reſtitution, &c. Lamb. 155. *Upon Forcible entrie.*

19. H. 7. 13. Upon a precept directed unto the Sheriff from the Juſtices of Peace, to return before them a Jurie to enquire of any ryot, rout, or unlawful aſſemblie, the Sheriff ſhall return four and twenty perſons dwelling in the Shire where ſuch ryot, &c. ſhall be committed, whereof every one of them ſhall have lands, &c. within the ſame Shire to the yearly value of twenty ſhillings per annum of freehold, or of twenty ſix ſhill. and eight pence of copyhold, or of both over and above all charges, and the Sheriff in default of ſuch return ſhall forfeit to the King the ſum of twenty pound. *Upon Ryots.* *xx. s.*

Alſo in Liberties and Franchiſes, and in Cities, Burroughs and other Towns and Places infranchiſed (which have Juſtices of Peace therein) the Bayliffs of the Franchiſe, or other Officer, ought to impannel ſufficient Jurors to enquire of Riots (if ſufficient perſons may there be found) upon pain of xl l. 2. H. 5. cap. 8.

2. H. 5. c. 8. Upon the default of the Juſtices of Peace and Sheriff in not executing the Statutes made for ſuppreſſing of riots, &c. the party grieved may have a commiſſion out of the Chancery to enquire of the matter, as alſo of the defaults of the Juſtices and Sheriff, upon which commiſſion the Coroners of that County where the ryot, &c. was committed, ſhall make the pannel, and ſhall return onely ſuch perſons for that inquiry as have land, tenements, or rents to the value of x l. by the year at leaſt: But if the Sheriff (reputed to be in default as aforeſaid) be diſcharged of his office at the time that ſuch commiſſions ſhall be awarded out of the Chancerie, then the new Sheriff of the ſame County ſhall make the pannel upon this commiſſion, and ſhall return only ſuch perſons as have ten pound by the year at leaſt (ut ſupra) and in default thereof the new Sheriff ſhall forfeit forty pound. *10. pound per annum.*

3. H. 7. c. 1. Enqueſts taken by the Juſtices of Peace to enquire of concealments of other enqueſts taken before them, or others, &c. every man that ſhall be returned upon ſuch enqueſts (of enquiry) muſt have lands and tenements to the yearly value of forty ſhillings at the leaſt. 3. Henric. 7. c. 1. *Enqueſts of enquirie.*

The ſufficiencie of Jurors in the Sheriffs Torne. See hic poſtea tit. Sherifs Torne, & 1. R. 3. cap. 4. *Sherifs Torne.*

Of what ſufficiencie Jurors impannelled in the City of London (in ſeveral caſes) muſt be. See the Statutes made 11. H. 7. cap. 21. 4. H. 8. cap. 3. 5. H. 8. cap. 5. & 37. H. 8. cap. 5. P. Jurors 16. *In London.*

What ſufficiencie is required in Jurors to enquire of felonies committed in Corporate Towns. See the Statute made anno 23. H. 8. cap. 13. & P. tit. Jurors 15. *Corporate Towns.*

The ſufficiencie of other Jurors in Corporate Towns. See the Statute made 35. H. 8. cap. 6.

Of

Lancaſter. Of what ſufficiencie thoſe Jurors muſt be in the County of Lancaſter, which ſhall indite a forreiner dwelling in another Shire, Et è converſo, See the Statute made anno 33. Hen. 6. cap. 2. P. Jurors 17.

In the County of Lancaſter every Juror muſt have v l. p ann. within the ſame County, who ſhall enquire, or paſſe in tryal of any Treaſon or Felony there. 7. H. 5. cap. 1. Et 18. H. 6. cap. 12.

Of what ſufficiencie thoſe Jurors muſt be which in any other County ſhall indite any perſon inhabiting within the County of Lancaſter. Ibid.

Wales. The ſufficiencie of Jurors in Wales. See the Statute made an 43. H. 8. cap. 26. Poulton tit. Wales 70.

Note that it is very needful for the high Sheriff to have a book containing the names of all the freeholders within his County, and their ſufficiencies: ſo that he himſelf may not onely make the pannels according to his oath, Artic. 14. But alſo that he may the better know their ſufficiency and ability, to be Pledges, or Sureties, &c. for other perſons, as occaſion ſhall ſerve: And beſides if the Sheriff ſhall return any Juror in iſſues which is not ſufficient, the Sheriff may be inforced to pay there iſſues for them.

CAP. 88.

The Antiquitie of Jurors.

The trial by Juries (ſcz. of all matters of fact, by the oaths of twelve men) was long time before the Conqueſt, and is one of the invincible arguments of the antiquity of the Common Laws of this Realm, being onely appropriated to them. Co. li. 3. & 8. Preface.

Maſter Cambden (in his Britannia pag. 153.) ſaith thus thereof: Whereas Polidor Virgil writeth that William the Conqueror firſt brought in the trial by twelve men, there is nothing more untrue, for it is moſt certain and apparent by the Laws of Etheldred the Saxon King, that it was in uſe many years before, &c. See Co. L. 155. b. & Eph. anno Chriſti 979.

By ſome opinions Lucius King of England ordained this our Tryals by twelve of matters in fact, (which ſhould be about anno Domini 190.) Maſter Saltern cap. 10. And this he ſaith that Godly King Lucius did according to the Example of Chriſt, who ordained and choſe twelve to bear witneſſe of his Reſurrection. Wherewith agreeth the Apoſtolical Canons. See John 15. 27. Acts 1. 22. & 10. 41. And Sir John Forteſcue ſaith, that Jurors were uſed among the Chriſtian Britains.

Again Thorpe (a reverend and learned Judge) in the time of King Edward 3. concurring in opinion with theſe before named, ſaith, that it was a foundation of the (Common) Law, that every Enqueſt ſhould be taken per duodecim liberos & legales homines; And if it were a foundation of the Law, then it was one of the firſt Laws. See 41. E. 3. fol. 36.

Beſides, we muſt needs confeſſe, that no Law can be without Trials; Now in the City of London (a moſt ancient City) they had this Trial by xij in their Huſtings, and in the time of the Britains, ſo in all other ancient Cities where they have like cuſtoms and liberties: yea the ancient Hundred Courts, Shiremootes, Wardmootes, Swainmootes, and Leets, which are often mentioned in the Saxon Laws as things

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in uſe, they had no other kind of tryal or inquiſition, but this by twelve men; and that by Cuſtom or preſcription, whereof no beginning could be proved by any Record, writing, or other lawful teſtimony; for that is in Law ſaid to be by Preſcription, and not the continuance of 50, 60, or 100 years. See plus Mr. Salterne cap. 10.

For the excellencie and indifferencie of this kind of trial, and why it is onely appropriated to the Common Laws of England, See Juſtice Forteſcue cap. 25, 26, 27, 28, 29, 30, 31, 32, &c.

CAP. 89.

Return of Iſſues.

NOw concerning iſſues to be returned by the Sheriff for default of appearing, the Sheriff ſhall do well to conſider of his oath, whereby he ſtands bound truly to ſet, and return reaſonable and due iſſues upon all ſuch as be within his Countie, ſc. upon the Deff. or tenants having ſufficient lands or goods, after their eſtate, to the end they may the rather appear.

Concerning the Deff. the Statutes to this purpoſe are as followeth.

Firſt by the Statute of Weſtm. 1. cap. 44. The Tenant or Defendant making default of appearance after the firſt Attachment returned, &c. ſhall loſe and forfeit iſſues.

And when the Tenant or Deff. is diſtreyned for ſuch iſſues, it ſeemeth that the Sheriff ought to deliver them to the Mainperners, or Suerties; and if the party maketh default at his day, the Sheriff ſhall anſwer for thoſe iſſues in the Exchequer, by the Eſtreats thereof made, And the Suerties ſhall be anſwerable therefore to the Sheriff; And this is the Order limitted by this Statt. of Weſtm. 1. ut dicitur.

Weſt. 2. c. 39. 1. E. 3. c. 5.

Iſſues upon the Defendant or Tenant.

But for as much as Sheriffs and Bayliffs of liberties many times make falſe returns as touching the Articles, Quod de exitibus &c. ſometimes returning that there are ſmall iſſues when they may return great, and ſometimes do make mention of no iſſues, It is therefore ordained by the Statt. of Weſtm. 2. that if the Plaintiff ſhall demand hearing of the Sheriffs return, it ſhall be granted him, and if he aver (or offer to prove) that the Sheriff, &c. might have returned greater iſſues, he ſhall have from the Juſtices of th'one Bench, or the other, a Writ to the Juſtices of Aſſiſe that they ſhall enquire thereof, (ſcz. that they ſhall enquire of what and how great iſſues the Sheriff might have made his return, from the day of the Writ purchaſed, unto the day of the return thereof:) And if it be found that he hath not anſwered for the whole, then upon the return thereof, he ſhall be charged with the overplus by the eſtrates of the Juſtices delivered into the Exchequer, and beſides ſhall be grievouſly amerced for his concealment. Vide Br. Iſſues 2, 4, 6.

And yet quære whether the Sheriff may after levy the ſame of the Tenant or Deff. for that it is contrary to his Return, &c. Vide Abr. d'aſſ. fol. 137.

For the form of this Writ directed to the Juſtices of Aſſiſe, to enquire of the iſſues. See Regiſtr. fol. 26. & 58.

And by the ſame Statute of Weſtm. 2. within or under the name of iſſues

Iſſues quid.

iſſues are contained rents, corn in the grange, and all moveables (except horſe, herneis, apparel, and houſhold-ſtuff.)

But where Corn is growing, it ſeemeth the Sheriff is not bound, (or needs not) to return that for iſſues, for that it may ſo fall out that the Corn may afterwards be ſpoiled or loſt, by reaſon of tempeſt, or otherwiſe, before it can be carried, &c.

Alſo it hath been holden that the Sheriff needs not to Return in iſſues, any Rent except it be due at the day that he ſhall make the Diſtreſſe: And if it be then due, the Sheriff may then come to the tenant, and command him to pay the ſame Rent to this Lord, &c. Lectur.

But note, that the Sheriffs and Bayliffs of liberties by the ſaid ſtatute of Weſtm. 2. & 1. E. 3. 5. muſt return ſufficient, and good and reaſonable iſſues upon ſuch perſons as have lands or goods ſufficient,

Quantum. ſcz. they muſt return in iſſues ſo much as the party may perceive and take, or as ariſeth of the profit of the lands within that County, and the Rents from the day of the teſte of the writ, until the day of the return thereof, and the value of his goods which he hath in all that time (except his horſe and their furniture, and his apparel and houſhold-ſtuff) and if the Sheriff or Bayliff of liberty doth not accordingly, they ſhall anſwer the ſurplu'age. See 27. H. 8. f. 3. (& Br. Iſſues 1, 2, 4, 6, 7, & 21.) And Mr. Fitzh. ſaith there that this ſtatute of Weſtm. 2. is good Law; and for that it is not in uſe much inconvenience is. Weſt. 2. 39. 27. H. 8. f. 3.

As if his land be worth xii. C. l. by the year, and one moneths ſpace between the Teſte and the Return, there C. l. iſſues muſt be returned upon him. Finch. 353. Finch 353.

The Sheriff returned upon the tenant or deff. but vij. d. in iſſues upon the Diſtringas, and therefore the Sheriff was to be amerced (by the opinion of Fo-teſcue) for that he had returned leſſe than the Coſts of the writ of Diſtringas, which is xiij. d. But quære whether the Sheriff ſhall be amerced only, for returning too ſmall iſſues, For by the opinion of Paſton in the ſame caſe, it ſeemeth rather that the Plt. ſhall have his Averment againſt the Sheriff upon the aforeſaid ſtatute of Weſtm. 2. and ſo to have his writ to the Juſtices of Aſſiſe, to enquire thereof, and ſo to charge the Sheriff with the overplus; and beſides to have the Sheriff amerced according to the ſtatute. Vide Abr. d'aſſ. 115. & 137. & 19. H. 6. 8. Br. iſſues 6.

And yet where the Sheriff hath returned too ſmall iſſues, upon the tenant or deff. if in time he prayeth to amend his return therein, the Court in favour will permit it. Br. Iſſues 1. 27. H. 8. fol. 3.

In a writ of Right of ward, or of ejectment of ward, after the Eſand diſtreſſe, if the Deff. cometh not in at the day prefixed, and that Proclamation be made, &c. according to the ſtatute of Marlebr. cap. 7. the Sheriff ought to return iſſues upon the defendant, &c. Vide hic cap. 102.

Upon a Diſtringas againſt the deff. the Sheriff muſt return iſſues. Hic cap. 56.

Upon a Diſtring' to Diſtreyn the ſuters for not ſuffering the Sheriff to Record the Plea in a Court Baron, &c. the Sheriff is to return iſſues upon the ſuters. Fitz. Record. 7. & Record. 15.

But in the former caſe the Sheriff returned but xij. d. in iſſues upon the ſuters. Fitz. Record. 15.

And upon a Diſtringas, though the words of the writ be Quod diſtring' per omnes terras & catalla ſua, &c. yet the Sheriff ought to diſtreyn him but reaſonably, &c. Hic cap. 56. tit. Diſtringas.

And yet if the iſſues returned upon any be never ſo great, it ſeemeth the party hath no remedy but they ſhall be forfeited, or the Sheriff ſhall be charged therewith if they be eſtreated. Hic cap. 11.

Upon

8. E 4 c 2. Upon proces againſt any perſon, for retaining or giving of liveries, or againſt any which is retained (contrary to the ſtatute,) the Sheriff ought to return upon the defendant (being a perſon ſufficient) no leſſe than xx. s. at the firſt day of the diſtreſs, and at the ſecond day xxx. s. and at the third day xl. s. and ſo at every day after more by x. s. in iſſues; and if any Sheriff do the contrary, he ſhall forfeit for every ſuch return againſt the form aforeſaid xx. s. *Reteiners.*

The ſtat. of Weſt. 2. c. 39. doth give an aberment againſt the return of the Sheriff if he return too ſmall in iſſues; and yet a man ſhall not aberre againſt the Sheriffs bailiff, that he might have returned greater iſſues, &c. But againſt the ſheriff himſelf onely, by this ſtatute of Weſtm. 2. Fitz. Averrement 43. *Averment.*

But by the Statute of 1. E. 3. cap. 5. made againſt the falſe returns of bailifs of franchiſes (which have full return of writs) a man ſhall have Averment, and recover againſt them (as well as againſt the Sheriff) and that of too little iſſues returned, as in other caſes: and all the puniſhment ſhall fall onely upon the bailifs.

Fitz. Averment 16. More, that the Plaintif may aver againſt the return of the Sheriff when he returneth too ſmall iſſues, as aforeſaid. But the Deff. cannot have ſuch aberment, and this by force of the ſtat. of Weſt. 2. c. 39. For before that ſtat. the Pl' had no remedie at the Common Law, but onely his action of the Caſe againſt the Sheriff in ſuch caſe, which remedie the Plaintif may have ſtill.

Fitz Averment 26. & 45. Note alſo, that an aberment of too ſmall iſſues lyeth as well againſt the return of the Sheriff of too ſmall iſſues returned upon Jurors, as upon the partie, &c. for this ſtat. of Weſt. 2. was made to out all delayes by falſe returns; and the party is as well delayed where the Sheriff returneth too ſmall iſſues upon the Jurors, as where he returneth too ſmall iſſues upon the Defendant. 11. E. 2. Fitz. Avermt 45.

And herewith agreeth the Book 2. R. 3. fol. 12. b. where the Sheriff ſhould have been amerced for returning too ſmall iſſues upon Jurors, but that the Sheriff was there preſent, and amended the ſame.

And yet in the Book 10. H. 7. fol. 11. ſome hold that too ſmall iſſues returned upon Jurors, was not within the ſtat.

CAP. 90.

What Iſſues the Sheriff, &c. muſt return upon Jurors.

By the Common Law the Sheriff was to return no iſſues, upon a Venire facias Jurator. Neither was it needfull (or at leaſt not uſed, nor required) by the Common Law, to return any great iſſues, upon any Writs of Habeas Corpora or Diſtring' Jurator. untill the ſtatutes of 35. H. 8. cap. 6. & 27. Eliz. cap. 6.

But for the more expedition of Juſtice, and more ſpeedy Trial of iſſues which are to be tryed by the verdit of xij men, (which in former times were greatly delayed, and that chiefly for lack of appearance of the perſons returned to trye ſuch iſſues) there have been divers ſtatutes made for the better expedition of Juſtice to be had in ſuch manner of triall of Iſſues; As alſo in ſome caſes of Enquiry, as hereafter followeth.

And as it is the Law that for execution of Juſtice every man ſhall be impannelled when need requireth, So it is a reaſonable Law that ſuch

as will not appear, ſhould have ſome puniſhment for their not appearing (for elſe the Law would be clearly fruſtrate in that point,) And the puniſhment or pain in ſuch caſe is, that they ſhall loſe iſſues to the King for their not appearing. Dr.St.38.

Habeas Corpus or Diſtring. Jur. And therefore upon every firſt Writ of Habeas corpora or Diſtringas Jurator. with a Niſi prius, delivered of record to the Sheriff or other Miniſter, the Sheriff or other Miniſter to whom the making of the return ſhall appertain, ſhall return in iſſues upon every perſon impannelled and returned upon any ſuch writ at the leaſt 1 s. and at the ſecond writ of Habeas corpora or Diſtring. with a Niſi prius, upon every perſon impannelled and returned upon any ſuch writ 11 s. at the leaſt, and at the third writ, &c. 111 s. and upon every writ that ſhall be further awarded to try any ſuch iſſue, to double the iſſues laſt afore ſpecified, until a full Jury be ſworn, or the proceſs otherwiſe ceaſed, upon pain to forfeit for every ſuch return of iſſues to the contrary five pound. 35.H.8.c.6. 27.El c.6.

al 1.10.s. 2.20.s. 3.30.s. 4. &c. *double.*

Corporate villes. But this extendeth not to any iſſues to be returned in any City, or Town Corporate, or other Town or place priviledged to hold plea, nor in the xij Shires of Wales, but that they may be returned as before they lawfully might have been, this act notwithſtanding. Stat. 27. El.cap.6.

Note, that upon reaſonable cauſe proved before the Juſtices of Aſſiſe, the ſaid Juſtices may diſcharge any Juror of the iſſues upon him returned, and the Sheriff, &c. having commandment by the ſaid Juſtices to omit the returning of ſuch iſſues as aforeſaid upon ſuch Juror, ſhall be therein diſcharged of the penalty aforeſaid, for the non-returning of the ſaid iſſues; alſo if the Juſt. of Aſſiſe do not come at the day appointed, or that the Aſſiſe be diſcontinued for any other occaſion (other than by default of Jurors) then every of the Jurors ſhall be diſcharged of their iſſues, &c. and the Sheriff, &c. ſhall be likewiſe diſcharged of the penaltie of theſe ſtatutes for the not returning of ſuch iſſues, as therein are limited. 35.H.8.c.6. 2.E.6.c.32.

Upon a Diſtring. Jurator. ſuper Appell. mortis (where they were Knights, and Eſquires who were in the writ) there was but viij d. returned (by the Sheriff) upon every Juror, and the Sheriff had been thereſore amerced, but that he was there preſent and amended it, and ſet or returned upon every Juror ij s. 2.R.3.13.

Vic' amerce.

And yet if the Sheriff upon a Diſtringas Jurat' ſhall return no manner of iſſues, and a full Jurie ſhall appear, &c. this is no error; for the King hath no loſs, and the iſſues are for the King, which he is not to have if a full Jurie do appear. Br.Retor.86. 3.H.7.f.8.

The ſame Law is, that if the Sheriff ſhall return iſſues upon vij and none upon the reſt, and a full Jury ſhall appear. ibm.

If the Sheriff ſhall return a Juror in iſſues which is not ſufficient (or hath no land) he is puniſhable, ſcz. the Sheriff ſhall be charged to pay thoſe iſſues himſelf.

Sur Juror nient ſummon. If upon an Habeas corpora, or Diſtringas Jurat. the Sheriff, &c. ſhall return any iſſues upon any Hundredor or Juror, whereas the ſame Hundredor or Juror was not lawfully ſummoned, warned, or diſtrained in that behalf, then the Sheriff, &c. ſhall loſe for every ſuch offence double ſo much as the ſaid iſſues returned upon ſuch Hundredor or Juror not lawfully ſummoned, warned, or diſtrained, ſhall amount unto, the one half thereof to the King, the other half to him that will ſue for the ſame. 5.El.cap.25.& 35.Henric.8.cap 6.

In Attaint. No Sheriff, or other Officer, ſhall return in the Kings Courts leſs iſſues in actions of Attaint, than fortie ſhillings upon the firſt writ of Diſtreſs, and five pound at the ſecond writ of diſtreſs, and the double upon 15.H.6.ca.5.

upon every other writ of Diſtreſſe, againſt the perſons impannelled and returned to be Jurors in the ſame action, upon pain to forfeit twenty pound to the King and partie grieved. See the ſtatutes of 11.H.7. c.21.23.H.8.c.3.& 13.Eliz.c.25. 1.40.s 2.5.li. al 2.&c. double.

What iſſues ſhall be returned upon the Jurors in London, See 11. H.7.c.21.4.H.8.c.3.& 5.H.8.c.5.P.Jurors 16,& 17. *In Londres. Sur Forc. Entrie.*

8.H.6.c.9. Upon every precept directed to the Sheriff from Juſtices of Peace to enquire of forcible entries, or deteiner, the Sheriff ought to return upon every Juror, at the firſt day, or upon the firſt precept twenty ſhillings in iſſues; and at the ſecond day forty ſhillings, and at the third day five pound, and at every day after the double, upon pain to forfeit to the King twenty pound for every default, and beſides to make fine and ranſom.

19.H.7.c.13. Upon every precept directed to the Sheriff from Juſtices of the Peace, to return them a Jury to enquire of a ryot, the Sheriff ought to return upon every perſon ſo by him impannelled, at the firſt day twenty ſhillings in iſſues, and at the ſecond forty ſhillings, and the Sheriff for his default herein ſhall forfeit xx l'. *Sur ryots.*

2.H.5.c.8. By the Statute of 2.H.5. cap. 8. upon a commiſſion granted out to enquire of the defaults of the Juſtices of Peace and old Sheriff, in not executing the ſtatute made for ſuppreſſing of ryots, the Cozoners ſhall return the Enqueſt, and they ſhall return upon every perſon impannelled, at the firſt day (when iſſues be to be loſt) xx s. at the leaſt, and at the ſecond day xl s. at the leaſt, and at the third C s. at the leaſt, and at every day after the double at leaſt, upon pain of xl l'. and if it happen that the ſaid Sheriff ſo reputed in default be diſcharged of his Office at the time that ſuch commiſſion ſhall be awarded out of the Chauncery, then the new Sheriff of the ſame Countie, his ſucceſſor mediate or immediate for the time being (and not the Cozoners) ſhall make the pannel upon the commiſſion, returnable in the manner and form as the ſaid Cozoners ſhould do in time when the Sheriff ſo reputed in default continued in his Office, and the ſame new Sheriff in default of returning ſuch iſſues, which the Cozoners be to return as aforeſaid, ſhall forfeit xl l'. to the King.

Upon an Information taken upon the ſtatt. of Liberyes (made anno 8. E. 4. cap. 3. the Sheriff ought to return in iſſues, at the firſt day xx s. at the ſecond day xxx s. at the third day xl s. and at every day after for every time to increaſe them x s. upon pain of xx s. to the Sheriff for every default.

4.H.6.7. Cromp. 126.a. Note alſo, that if there appear ſo many Jurors, ſo that twelve are ſworn upon the iſſue, then the reſt which made default ſhall not loſe any iſſues; otherwiſe (ſcz. if twelve do not appear) thoſe which appear ſhall have their appearance noted ſc. entred and recorded, and ſhall ſave their iſſues, and the reſt which made default ſhall loſe their iſſues. Br. Iſſues 16.Statt.8.E.4.cap.3. 12. *appeare, nul iſſues ſerra.*

And yet when eight, &c. of the Jury appear, and the reſt make default, by reaſon whereof they are to loſe their iſſues, and at the ſame time the Plaintiff is demanded, and is nonſute, this ſhall ſave the iſſues of the Jurors, quod nota. Br. Iſſues 14.

A Jurie do appear and after make default, they ſhall loſe their iſſues. Br. Enqueſt 42.

Tales is a Latin word, ſignifying like or ſuch, and is here uſed for a ſupply of men impannelled upon a Jury, and not appearing, or at their appearance challenged as not indifferent; Here the Judge upon Petition granteth a ſupply to be made by the Sheriff, of ſome other men there preſent, Tales, or like in reputation to thoſe that were impannelled.

Alſo by the ſtatute of 35.H.8. where the principal Jury do not fully appear, or that after appearance of a full Jury, by challenge of any of the parties the Jury is like to remain untaken for default of Jurors, there the Juſtices upon requeſt may cauſe a Tales de circumſtantibus to be returned or named by the Sheriff, &c. But yet thoſe of the principal Jury which made default ſhall loſe their iſſues notwithſtanding that the Jury ſhall be full upon the Tales, &c. Br. Iſſues 16. 35 8.H c.6. P. Juror 23. See Dier 200, 246. & 376.

Note, that a Tales de circumſtantibus may be granted at the ſute or requeſt of the Plaintiff, or the Defendant; as alſo upon and in popular actions; and the Sheriff (or other miniſter to whom the making of the return ſhall appertain) ſhall add and anner to their former pannels, the names of the perſons ſo named and impannelled upon the Tales, &c. 35 H.8.c.6. 4.P.et M.7. 14.El.c.9.

Note, that there may be many Tales, one after another till the Jury be full, as a Decem Tales, an Octo Tales, a Sex Tales, &c. Finch. 414.

But every Tales muſt be of a leſs Number than the former; as after an Octo Tales a Sex Tales; but not a Decem Tales, nor an Octo Tales again. ibm.

Alſo every Tales muſt be fewer in number than the Principal Pannel: As where the Pannel or Jury is of xij. there may be a Decem, or Octo Tales, &c. Or in any Atteynt where the Jury is 24. there may be a Viginti Tales, &c. But in Indictments and Appeals that touch life, a Tales may be of a greater number than the Principal Pannel. ibm.

Alſo every Tales muſt be an even Number. Ibm.

And they muſt be others of the ſame ſort that the principal Pannel were of. ibm.

Iſſues returned upon Mainpernors or Pledges, &c. See antea tit. Iſſues.

Eſtreats ſera deliver in leſchequer yearly al Mich.

By the ſtatute made 51. H. 3. de Scaccario, all the Kings Courts, Juſtices, Commiſſioners, and others, ſhall deliver into the Exchequer (at Michaelmas yearly) the Eſtreats of Fines and Amerciaments made, aſſeſſed or taxed before them, and of all iſſues and other things wherefore the Eſtreats are wont to be delivered there, &c. And from thence they ſhall make proces againſt the parties to anſwer thereunto, and to ſatisfie the King of that which is done unto him.

The Commiſſioners of Sewers ſhall alſo yearly (at Michaelmas) deliver their Eſtreats into the Exchequer, &c. 13.Eliz.c.9.

Alſo the Eſtreats of the value of the Cattel forfeited in caſe the Secunda Superoneratione ſhall be put into the Exchequer by the Juſtices.

See plus hic antea titulo Fines.

Vic'ne levier ſans garr'.

No Sheriff, &c. ſhall levy any iſſues other than he hath warrant for out of the Exchequer by the Eſtreats of the Juſtices; neither ſhall the Sheriff be charged with (or to levie) any other iſſues than thoſe for which he ſhall have ſuch warrant out of the Exchequer. And in thoſe Eſtreats every man ſhall be charged for iſſues forfeited like as of amerciaments. And by the ſtat. 43. E.3.cap.9. Sheriffs muſt levy their iſſues by their extracts under the ſeal of the Exchequer, upon pain to yeld treble dammages to the partie griebed, and to make fine to the King. 27.E.1.c.2. P.Sher.19.

South ſeale.

And yet (as Mr. Lambert telleth us) The Eſtreats of the Juſtices of Peace be now an immediate warrant for the Sheriff, to levy not only the Fines and Amerciaments, but alſo all other iſſues, penalties, loſſes, forfeitures, and ſums whatſoever ariſing before them, (And therefore whatſoever ſums are to be Eſtreated into the Exchequer) the ſame the Sheriff may now levy upon the ſaid Juſtices Eſtreats,

Lambert

Lambert de Pace. 561, 562. See Statt. 14. R. 2. cap. 11.

And note, that theſe Eſtreats of the Juſtices (being made by the Clerks of the Peace out of their Records) are to be indented by the Clerks of the Peace, and by them to be delivered ſunderly to the Sheriff, and to the Barons of the Exchequer Libr ibm.

But the Sheriff in many Counties is herein wronged by the Clerks of the Peace, who receive all the Fines, and thereout payes (or might pay) the Juſtices wages, and then deliver the reſt to the Sheriff, and ſhould make his Eſtreats accordingly; whereas many Clerks of the Peace put up the ſurpluſage (if there be any) yea ſometimes all into their own purſe, and the Sheriff payes it to the King and never hath it. Wilk. 39.

7. H. 4. c. 3. And whereas in former times divers did loſe iſſues, fines and amerciaments in the Kings Courts (at the ſute of any partie) and alſo iſſues and amerciaments in Enqueſts and Juries wherein they were impannelled betwixt partie and partie, whereupon the Bailiff, &c. which gathered the green wax did levy the ſame iſſues, fines, and amerciaments by Eſtreats in obſcure and ambiguous words, not containing the ſum loſt, nor making mention of the cauſe of the loſs, nor the day of the term, nor betwixt what parties, nor the nature of the writ in which the ſame iſſues, fines, and amerciaments were loſt, ſo that the ſaid Officers did levy the ſum two or three times, and ſometimes the double ſum contained in their Eſtreats; for remedie whereof the ſtat. made an. 7. H. 4. c. 3. hath enacted, That the Clerks of the Eſtreats in the Courts or places where ſuch iſſues and amerciaments ſhall be forfeited, ſhall make the rolls of the Eſtreats of ſuch iſſues and amerciaments diſtinctly by expreſs words of the cauſe of the loſs or forfeiture, of the term, of the year, and the nature of the writ or action, and betwixt what parties ſuch iſſues and amerciaments be or ſhall be loſt, and that as well in the Kings ſute, as in the ſute of the partie.

Eſtreats defective.

Le forme del Eſtreats.

P. Eſtreats 2.

And the Sheriff muſt in his Warrants to his Bayliffs, expreſs alſo the cauſe of the forfeiture, &c.

27 El. 7. P. Jurors 34. And now by the ſtatute of 27. El. cap. 7. the Sheriff in his Return, is to ſet down the dwelling place of every Juror, and no extract of iſſues againſt any Juror ſhall be delivered out, or put in ure, without ſuch addition as is put in the original pannel (or Tales) wherein ſuch Juror ſhall be returned; and none of the Sheriffs Officers ſhall collect or gather any iſſues ſo extracted of any other perſon or perſons than of ſuch perſons as (by vertue of the ſaid Eſtreats) is of right chargeable with the paiments thereof, upon pain to forfeit vj l. xiij s. iiij d. to the King and partie grieved.

Ne levier ſinon de droit perſon.

CAP. 91.

Iſſues.

NOte that theſe Iſſues returned and loſt in reſpect of non-appearance of the Deff. or perſons impannelled, &c. ſhall be forfeit to the King, and (by the Eſtreats out of the Exchequer) ſhall be levied by the Sheriff to the Kings uſe. Br. diſtreſs. 41. Fi. 59. b.

And with theſe iſſues, as well in theſe caſes, as in any other caſe of a Diſtreſſ. infinite, the land is chargeable into whoſe hand ſoever it come after. Finch 353. as appeareth by that which followeth.

Spr

Sur que tieles issues serra servie per le vic. &c.

Forfeit al Roy. *Sur que serr'*

Si home soit impannell, & puis fait feoffment in fee de son terre uncore le terre serra lye al issues que il perder per default, en apres pend' cel briefe, Vavisor (12. H.7.) *sed* Davers & Wood *contra: Mes per eux, lon home est distr' & puis alien son terre, ceste terre serra charge, & liable in les mains le feoffee, des issues pend' le proces apres le feoffment, &c.* Br. Challenge 160. Vide Co.L.102.b. 12.H.7.4.a.

Sur purchasor. *Le heir in taile serra charge one lissues perde per son pere in son vie, & ceux issues serra levie sur le terre taile,* Br. Issues 15. 23.

Sur issue in taile. *Tenant pur vie est impannell sur Jurie, & perde issues & devie, le terre serra charge one ceux issues, & ils serra levie sur le possession de cestuy in reversion,* Br. Issues 23. Dr. & St. 37, 38. Finch 59.

Sur cestuy in Reversion. *Sur feme.* *Home seisie in jure uxoris, est impanell, & perde issues, & devie, le terre serra charge one ceux issues, & ils serra levie sur le possession del feme,* Br. Issues 23. Dr. & St. 38.

Successor. *Si issues sont retorne sur Evesque, &c. & puis il est remove, son successor serra charge del issues,* Br. Issues 25. Finch. 59.

Lessee. *Si home ad perde issues, & fait lease pur ans de son terre, & le vic' returne le lessor in issues, le vicount payer eux luy meisme: Et uncore le vicont poit aver returne le rent in issues: Mes il ne poit distr' le termor ou lessee durant le terme,* Br. Issues 5. 7.H.6.f.9.

Estr'. *Si home ad perde issues, & lavers del estr' vient sur le terre, semble que le vicount poit distraine ceux avers del estr' pur ceux issues, car le terre est charge del ceo: mes semble que le beasts destreine covient estre levant & couchant,* Vide Doct. & St. fol. 15. a. Fitz. N. B. 101. Br. Distr' 66. vide 5.H.7.1. moratur in lege. Br. dist. 141.

Joyntenant. *Si lun joyntenant perde issues, & le avers de son companion vint sur le terre, ceux avers ne serra distr' pur ceux issues: car lavers de son companion fueront eins per droit, lon lavers del estr', fuer' la per tort.*

Et nota que touts les ters que Juror ad al temps del Venire fac: *serve sur luy, serra lyes a ses issues, per avantage le Roy: Et sil aver nul ter. al temps del* Venire fac. *servie, le vic. que retorne luy in issues serra charge de pay tiel issues lui meisme: Et si tiel retorne fuit par son Predecessors, le prochein vic' avera bre. de Disceit vers son Predecessors.*

Et si le terr. le Juror soit recover vers luy, Ou que il aver ceo a terme d'ant' vie, & que cey que vie est mort, donque le vic' doit retorne ceo special matter, & issint Nihil habet. Fitz. Retor. 13. hic antea cap. 78.

Mz. le vic' serra estopp de retorne Nihil, *ou issues fuer retorne par luy devant.*

CAP. 92.

Now concerning the choosing, and returning of Knights and Burgesses, of the Parliament; and for the levying of their wages: and what the Sheriff is to do therein.

Parliament. By the statute made, 5.R. 2. c.4. every person (be he Archbishop, Bishop, Duke, Earl, Baron, Knight, Citizen, Burgesse, or other) shall upon summons come to the Parliament, &c. And if any Sheriff be negligent in making his returns of writs of the Parliament, or that he leave out of the said returns any Cities, or Boroughs, which be bound, and of ancient times were wont to come to the Parliament, 5 R. 2.

liament, he ſhall be amerced, or otherwiſe puniſhed in manner as was accuſtomed to be done, &c. and it ſeemeth now by the ſtatt. made 23. H. 6. cap. 15. that the Sheriff for every ſuch default, ſhall incur the paine contained in the ſtatt. made 8. H. 6. cap. 7. which is to pay 100 l'. to the King, and to have one years impriſonment, &c.

After ſuch time as the Sheriff hath received the Kings writ for ſummons of the Parliament, and election of the Knights, &c. the Sheriff (or his undersheriff) before his next County, is to make out his warrants, to his Bayliffs of every Hundred, commanding them thereby, to ſummon or warn the Freeholders within their ſeveral Bayliwicks, to be at the next County, and there to make choyce of their Knights, &c. Or elſe the Sheriff at ſome Quarter Seſſions of the peace, or ſome other generall meeting of the Country (to be betwixt the receipt of the Kings writ, and his next County) may give publique Notice thereof to the Freeholders. *Mez ſi le vic. ne face les Freeholders deſtre ſummon or ſil ne done Notice al ſemble que le vic. ſera puny come eſt avant dit.*

But there are divers miſchiefs in the chooſing of theſe Knights for the Parliament worthy of conſideration.

After the Sheriff hath received the Kings writ for the chooſing of theſe Knights, the Sheriff at his next County Court, and betwixt the hours of viij. and xj. before noon, is to proceed to the Election without Colluſion upon the paynes limited by the ſtatt.

Now firſt the Sheriff having received this writ, often concealeth it, and giveth either no warning, Summons, or Notice thereof (or at leaſt very ſmall Notice is given) to the Freeholders; ſo that very few can be preſent to attend the Election.

Next ſome few being preſent (and perhaps laboured of purpoſe to be there) the Election is haſtily oftentimes made by theſe few (with more haſte than good ſpeed) And before that the reſt of the Freeholders be come in, and the Sheriff by one of the clock is gone, and the Election made and ſo returned.

Thirdly the extraordinary labouring of voices beforehand: whereas this Election ſhould be free.

Again, where this labouring for voices is, divers are ſent for of new to give their voices therein, who were neither preſent at the reading of the ſaid writ, nor during the hours appointed, yea perhaps come not in till the next day.

7. H. 4. c. 15. By the ſtatute made 7. H. 4. cap. 15. it was enacted that the election of the Knights of Counties for the Parliament ſhall be made in the form following, ſc. at the next County to be holden after the delivery of the Kings writ to the Sheriff, for the election of Knights of Parliament, proclamation ſhall be made by the Sheriff in the full County of the day and place of Parliament; and that all they which be there preſent (as well ſuters duly ſummoned for the ſame cauſe, as others) ſhall attend and in full County ſhall proceed to the election of their Knights for the ſame County for the Parliament freely and indifferently, notwithſtanding any requeſt or commandement to the contrary, And after that they be choſen, the names of the perſons ſo choſen (be they preſent or abſent) ſhall be written in an Indenture under the ſeals of all them that did chuſe them, and tacked to the ſame writ of Parliament, which Indenture ſo ſealed and tacked ſhall be holden for the Sheriffs return of the ſaid writ, touching the Knights of the Shires; and in the writs of Parliament to be made hereafter this clauſe ſhall be put: Et electionem tuam in pleno comitatu tuo factam, diſtincte & aperte ſub ſigillo tuo & ſigillis eorum qui electioni illi interfuerunt nobis in cancellaria noſtra ad diem & locum in brevi contentum certifices indilate, ſtat. 11. H. 4. 1. 6. H. 6. 4. 23. H. 6. 15. *Proclam.*

And

And after by the ſtatute made undecimo Henrici quarti capitul. primo,& 8.Hen.6.cap.7. it was further ordained, that if it be found by any enqueſt before Juſtices of Aſſiſe that any Sheriff ſhall make any return contrary to the tenor of the former ſtatute made 7.H.4.cap.15. That then the ſaid Sheriff ſhould forfeit one hundred pound to the King,and have one years impriſonment without bayl. And beſides the Knights ſo unduely returned ſhall loſe their wages, &c. of old accuſtomed: But yet the Sheriff and Knights may have their Traverſe to ſuch Enqueſts,&c. 6.H.6.cap.4.& 8.H.6.cap.7. Alſo the Sheriff may be ſued of perjury in the Star Chamber for ſuch falſe return. Dyer 167.hic cap.2.

11.H.4. 8.H.6. P.Parliament.4.

Forf. le vic.

Dyer 168.

Again, by the ſtatute made An. 23.H.6. cap.15. The Sheriff making any return contrary to any of theſe ſtatutes, ſhall forfeit another hundred pound to the other perſon choſen Knight for the ſame Shire,and not duely returned.

Queux perſons ſerra eſlie.

By the ſtatute made 1.H.5.c.1.& 8.Hen.6. It was enacted,that none ſhould be choſen Knight of the Shire,unleſs they be reſiant within the Shire where they ſhall be choſen, the day of the date of the writ of the ſummons of the Parliament. And by another ſtatute made 23. Hen.6. the Knights of the Shires for the Parliament, muſt be notable Knights, or ſuch Eſquires, or Gentlemen born, of the ſame Country, as be able to be Knights: and no man may be ſuch Knight, which ſtands in the degree of a Yeoman or under.

1.H.5. 8.H.6.

But no Sheriff during the time of his Sheriffwick, may be choſen Knight, or Burgeis, of the Parliament (for the ſame County, or for any other County, as it ſeemeth,) See the form of the writ for the Chooſing of Knights. Hic poſtea.

Alſo the Mayor of a City or Town Corporate, ſhall not be choſen to be a Burgeis,or Citizen, for the Parliament. Br.pliamt 7.

Perſons atteynted of Treaſon, or Felony, being choſen to be Knights, Citizens, or Burgeſſes of the Parliament, it ſeemeth the Sheriff ought to return them, See 1.H.7. fol.4. Br.pliamt 37. where divers Knights and Burgeſſes were atteynted of Treaſon by a former Parliament, and by the opinion of all the Juſtices, thoſe Knights and Burgeſſes were not to ſit in the Parliament Houſe, untill the act of their Atteynder were reverſed, but after they might ſit.

But yet a man atteynted of Treaſon, or Felony, Nor a man outlawed, ought to be choſen a Knight or a Burgeis for the Parliament; For all Knights and Burgeſſes ought to be Legales homines.

Neither ought any man that is in Execution for debt,&c. be choſen a Knight or Burgeis for the Parliament. Cromp. *Author des Courts* 11. And yet ſuch perſons being choſen, it ſeemeth that the Sheriff ought to return their names.

Eſliors queux.

Alſo the chuſers of the Knights for the Parliament ought to be only of ſuch perſons as are reſiant and dwelling within the ſaid Shire the day of the date of the ſaid writ,&c. 1.Hen.5.1.& 8.Hen.6.7.

Alſo the chuſers of Burgeſſes for the Parliament, muſt be only of Citizens and Burgeſſes reſiant, dwelling, and free, in the ſame Cities and Borroughs.

And yet if a man have two dwelling houſes in ſeveral Shires, and a family or ſervants at each houſe; Or if a man kéep his family in one County, City, or Borough, and abideth in ſervice in another County, &c. in both theſe caſes he may be a chuſer of the Knights of the County, or of the Citizens, or Burgeſſes, of the City or Burrough, where he kéepeth his family;for he ſhall be ſaid in Law to dwell in each of the ſaid Counties,or Burroughs, &c. (But he muſt have 40 s. Free-

hold

hold where he is in ſervice, &c.) Cromp. *Author. des Courts* 3.

Alſo a Freeman or Burgeſſe of a Town Corporate, having 40. s. Freehold Lands or tenements within the County (per annum) may be a chooſer of the Knights of that Shire, &c. in which the Burrough where he dwelleth, is. And ſo one man may have a voice, and may be a chooſer of the Knights or Burgeſſes, in two ſeveral places, &c.

Vide hic fol. 199. & ſcribe hic.

Note that this election of Knights and Burgeſſes, may be by voices, or holding up hands, or by any other like way whereby it may be diſcerned who hath the greater number. Plo. 123. & 128. b. Bucklies Caſe. *Election coment.*

8. H. 6. cap. 7. 10. H. 6. c. 2. Alſo by the ſaid ſtatutes made 8. H. 6. & 10. H. 6. It was ordained, that no perſon ſhall be a chooſer of the Knights for the Parliament, except he hath Freehold lands or Tenements within the ſame County, to the value of fortie ſhillings by the year at the leaſt above all charges: And that ſuch as have the greateſt number of voices of them, which may diſpend fortie ſhillings per annum as aforeſaid, ſhall be returned Knights for the Parliament for the ſame County, by Indentures ſealed between the Sheriff, and the ſaid chooſers: and the Sheriff hath power (given to him by the ſame ſtatute of 8. H. 6. 7.) to examine upon oath every chooſer, how much he may expend by the year, if he doubteth thereof. *Eſliors jurus*

And ſo the Sheriff is here made a Judge in this Caſe, ſc. to examine and judge of the ability of theſe Chooſers of the Knights for the Parliament. But for that no perſon ſhall be a Chooſer of the Knights for the Parliament, except he hath freehold Lands or Tenements to the valde of fortie l. by the year, above all charges, &c. To avoid many ambiguities and doubts which have riſen concerning theſe words, Lands or Tenements, you muſt underſtand that theſe words are thus to be taken or Conſtrued.

Firſt, he that hath no other Freehold (or inheritance) but advoulons of Churches, though they be of the valuë of 40 s. (or 40 l'.) by the year, yet thereby he hath no ſuch ſufficiency, nor ſuch Freehold-land or Tenements, as that thereby he may be a Chooſer of the Knights of the Parliament, &c.

He which hath no other Freehold than Common of paſture, though that be to the value of 40. s. per annum, yet he may be no Chooſer: But he which hath a Freehold houſe or lands, of the yearly value of 30. s. and beſides hath thereto belonging a Common of paſture appendant, to the yearly value of xx s. he may be a Chooſer, &c.

Otherwiſe it is, if his houſe be a new erected Tenement, or erected within the time of memory; for that Common Appendant muſt be by preſcription; And therefore except ſuch houſe be of the yearly value of xl. s. beſides the Common, it enableth him not.

If a man have a Freehold Eſtate of Lands or Tenements in the right of his wife, or *per terms de anter vie*, of the yearly value of xl s. it is ſufficient.

And yet if after the Return the Land be evicted, or that the wife, or *cẽy que vie* do dye, he may be challenged. Co. L. 272. b.

If a man hath a free Warren of Coneys, the which Communibus Annis is worth xl s. per annum, this is ſufficient Freehold, &c.

If a man maketh xl s. by the year (Communibus Annis) of his Woodſales, Cole-mynes, Tythes impropriate, or the like, being his Freehold, theſe are ſufficient, &c.

But if A. hath Lands to the value of xl. l. per annum, and letteth the ſame out to another for life, reſerving no Rent, or but xx s. or xxx s.

Rent per annum, this ſeemeth not to be any ſufficiency of Freehold to A. during the term, &c.

Yet if he letteth ſuch his Lands to another but for years (though for divers years) reſerving only xx s. or xxx s. Rent per annum, (Or abſque aliquo reddendo) during the ſaid years, yet here he may be a Chooſer, &c. in regard of the Freehold in him.

If Lands be letten for years, the remainder to A. in Fee-ſimple, or in fee-tayle, here A. may be a Chooſer, &c. for the Freehold which is in him, if the Lands be worth xl s. per annum.

If a man hath xl s. Rent per annum, Or an Annuity of xl s. per annum iſſuing out of Lands, during his life, this is ſufficient.

Note, that by the Common Law, all Freemen of England, had a voice in the Election of theſe Knights, within the Counties where they dwelt: But now by theſe Statutes of 8. H. 6. & 10. H. 6. they are reſtrained to ſuch as have xl s. Freehold per annum within the County, &c.

Again, it ſeemeth they muſt be ſuch Freeholders, as do contribute to the wages of the Knights of the Shire; Or elſe ſuch as are ſuters to the County Court.

Clergy men, for their Spiritual livings, are holden to have no voyces in the Election of theſe Knights.

If a Clergy man ſhall alſo purchaſe, or otherwiſe ſhall have any Laye fee to the value of xl s. per annum: Quære whether he hath a voice in the chooſing of theſe Knights, for that he alſo hath a voice in chooſing for the Convocation houſe, &c.

Fellows of Houſes or Colledges in Univerſities, are holden to have no voices (in this Election of Knights) for or by reaſon of their Chambers or other avayles, &c. in their Colledges.

Gentlemen of the Houſes of Court, or Chancery, are holden to have no voices herein, by reaſon of their Chambers there.

Note that the Election of Knights for the Parliament, ought to be made by the Sheriff in his full County; and between the hours of eight and eleven before noon, without colluſion, upon the pains above limited, and this by the Statute, 23. H. cap. 15.

And all ſuch as be Chooſers of theſe Knights muſt be preſent in the County Court, between the ſaid hours of viij and xj.

Quære if they ought not to be preſent at the reading of the ſaid writ of the Summons of the Parliament.

If the Election of theſe Knights be made by the Freeholders in the full County between the hours of viij and xj as aforeſaid, although the Sheriff ſhall make his Return, and ſeal his Indentures afterwards, and in another place, yet it is good.

So then Sheriffs ought to make due Election of Knights for the Parliament, by the Freeholders of the County, and in open County Court, and between eight and eleven of the clock in the forenoon, And ought to return for Knights of the Parliament, ſuch perſons as are ſo choſen by the greater number of Freeholders (dwelling within the ſaid County) which may expend forty ſhilling per annum, at the leaſt within the ſame County, upon the pains above limitted: See Dyer fol. 60. where Bronker Sheriff of Wiltſhire was ſued in the Star-chamber upon an Information of perjury at the Kings ſute, for a falſe return made of Sir John Thin to be Knight of the Parliament for the ſaid County, Where in truth, Penruddocke was choſen by the greater number of the Freeholders in the ſaid County, in deceit of the County, and of the whole Realm.

Note, that ſuch only are to be Knights of the Parliament, as ſhall be

be chosen by the greater number of the Freeholders present in Court as aforesaid; And therefore if the Sheriff shall return any other, upon complaint thereof made to the Nether House of Parliament, they, after Examination and due proof hereof, may and will cause the Sheriff to amend his Return, &c. and besides they will punish the Sheriff: Or they may cause a new writ to be sent out, and so a new Election to be made, where they shall see cause.

The Citizens and Burgesses of Burroughs, ought to be chosen of persons, resiant, dwelling, and free, in the same Cities and Burroughs, and none other in any wise. 1.H. 5.cap. 1. tamen aliter in usu.

23.H. 6. c. 15. Cromp. 208.; P. Parl. 5. Also every Sheriff after the receit of the Kings writ for summoning of the Parliament for the Election of Knights of the Parliament, ought forthwith to make out his Warrants under the seal of his office, to every Mayor, and Bayliffs of Cities and Burroughs, within the County, reciting in his said Warrants the writ of Parliament, commanding them thereby to chuse Citizens and Burgesses to come to the Parliament: (sc. if it be a City to chuse Citizens for the same City by Citizens; and if it be a Burrough to chuse Burgesses by Burgesses or Free men of the same Burrough) And those Mayors and Bayliffs must make a lawful return of that precept to the Sheriff, by Indentures made between them and the Sheriff of their Election, and of their names which are elected. And the Sheriff must set his hand and seal of Office to the one part of the indentures, and then deliver it to the Mayor, or Burgesses, or Citizens to be kept, And to the other part the Mayor, or Citizens, or Burgesses must set their hands and seals, and deliver it as their deeds to the Sheriff, to be certified and returned by him, with the writ of Summons, to the Clark of the Crown (who will have iiij. s. for his fees, for every Indenture.) And the Sheriff ought to make a good and true Return of all this (sc. of the said writ, and of every such return to him made by the Mayors, &c.) upon the pains hereunder limitted. *Burgesses.*

23.H. 6. c. 15. Cromp. 207. Note, that if the Sheriff shall do any thing contrary to this statute of 23. H. 6. 15. (concerning the election of Burgesses, or due returning of them) Or of any other statute made for the election of Knights to come to the Parliament, he shall incur the pain of one hundred pound to the King, and imprisonment for one year without bail; And further shall pay to the party so chosen, Knight, Citizen or Burgesse, and not by him duely returned (or to any other person, who in default of such Knight, Citizen or Burgesse, will sue) one other hundred pounds, to be recovered by action of debt, against the said Sheriff his exec. or admin.

Mez ilz comencer lour action deins 3. mois apres de dit Parliamt commence; Et sil ne issint fait, & ceo prosecute one effect sanz fraude, anter que voila avera le suite par le dit 100 l. come le Chivaler averoit; Et Costs de suite auxi serra agard al dit Chivaler, & anter que suera in son default. 23. H.6. cap. 15. Vide Dyer 113. & Plo. 118.

Si ascun Mayor ou Baylyff fait untrue Retorne (al vic.) ils forfeter 40. l. al Roy, & al party (sc. *al Citizen, ou burgess nist retorne*) *anter* 40. *l.* Stat. 23. H. 6. cap. 15.

Auxi si ascun Chivaler, Citizen, ou Burgess, retorne par le vic. de vener al Parliament, apres tiel retorn soit per ascun person mise hors, & un anter mise in son Liew, Cey que est issint mise in son Liew, sil impriſt sur luy d'estre Chivaler, Citizen, ou Burgess, al ascun Parliamt, forfeter al Roy 100 *l. & al Chivaler, Citizen, ou Burgess, issint retorne & mise hors; anter* 100 *l. &c.* ibm.

Et uncore si un Burgess soit apres fait Mayer dun ville; Ou si Chivaler

ou Burgeſs de Parliamt ſoit malidie, ceux ſont ſufficient cauſes de elect novels; Et al Parliamt tenus per Adjournemt Anno 38. H. 8. *ils faireont accordt par bre. le Roy & ceo fuit admitt. & accept.* Br. pliamt 7.

Now the names of the ſaid Knights ſhall be returned into the Chancery by Indenture ſealed between the Sheriff and the Chooſers of the Knights for the Parliament, in manner following.

The form of the Indenture for the Knights of Parliament.

HÆc Indentura fact. in pleno Comitat. Cantebr. tent' apud caſtrum Cantebr. die Jovis 30. Maii Anno regni, &c. (reciting the Kings Stile at large) inter A. B. Milit. vic. comitat. prædict. ex una parte, et *I. Cage* Milit. *T. Pal.* Armig. & M. D. R. T. et I. B. Armig. &c. & multis aliis perſonis Comit. prædict. & elector' duorum milit. ad Parliamentum in breve huic Indenturæ conſut' ſpecificat. ex altera parte, qui ut maior pars totius comitatus predict. tunc ibidem exiſtens, Jurat. & examinat', ſecundum vim formam & effectum diverſorum ſtatutorum inde ædit'. & proviſor: eligerunt *Ed. Peyton* milit. & Barron & *Johannem Cutts* milit. infra comitat. prædict. commorantes gladiis cinct. milites, habiles, & magis idoneos, & diſcret'; dantes & concedentes prædict. duobus milit. plenam & ſufficientem poteſtatem pro ſe, & tot. communit. comitatus prædict. ad faciend. & conſentiend. hiis quæ ad Parliament. in dict. brevi content. de communi conſil. regni dicti domini regis nunc Angliæ, contingeris ordinari, ſuper negotiis in dicto brevi ſpec. In cujus rei teſtimonium uni parti hujus Indent. penes dictum dominum regem remanent. partes prædict. ſigilla ſua appoſuerunt, alteri vero parti ejuſdem Indent. prædict. vic. ſigill' ſuum appoſuit, datum die Anno & loco ſupradict. &c.

The form of the Indenture for the Citizens or Burgeſſes.

THis Indenture made, &c. (reciting the day, and year, and the Kings ſtile at large, as before, &c.) Witneſſeth, that by vertue of a Warrant to me directed from Sir A. B. Knight Sheriff of the County of Cambridge, for the electing and chuſing of two Burgeſſes, men of good underſtanding, wit, knowledge, and diſcretion, for cauſes concerning the weal publick of the Realm, to be at his Majeſties high Court of Parliament to be holden at his Highneſſe Citie of Weſtminſter the day of next coming, I Maior of the Borough or Town of Cambridge, with the whole aſſent and conſent of the reſt of the Burgeſſes there, have made choice and election of of Eſquier, and of of Eſquier, to be Burgeſſes for our ſaid Borough of Cambridge, to attend at the ſaid Parliament, according to the tenor of the ſaid Warrant to me directed in that behalf. In witneſſe whereof I have to theſe preſents ſet our common ſeal of our ſaid Borough, the day and year firſt above written.

This Court of Parliament is the higheſt Court of England, wherein the King himſelf ſitteth in perſon, and cometh thither at the beginning, and ending, and at other times at his pleaſure.

Every Lord of the Parliament (as well Lords Spiritual as Temporall) is to be ſummoned ſeverally, by the Kings writ, to come to the Parliament, at a certain day and place ſet down in the writ.

The

The Form of which Writ is as followeth.

Carolus Dei gratia, &c. chariſſimo conſanguineo ſuo Comit' *Eſſex* ſalutem. Quia de adviſamento & aſſenſu Conſilii noſtri pro quibuſdam arduis & urgentibus negotiis, nos, ſtatum, & defenſionem regni noſtri Angliæ, & Eccleſiæ Anglicanæ concernent' quoddam Parliamentum noſtrum apud Civitatem noſtram Weſtmonaſterium xij. die Febr. ꝓxim̃ futur' teneri ordinavimus, Et ibidem vobiſcum, ac cum Prælatis, Magnatibus, & Proceribus dicti regni noſtri Colloquium habere ac tractatum, vobis ſub fide & ligeanciis quibus nobis tenemini firmiter injungend mandamus, quod conſiderat' dictorum negotiorum arduitate & piculis imminentibus, Ceſſante excuſatione quacumque dict' die & loco ꝑſonaliter interſitis nobiſcum, ac cum Prælatis, Magnatibus, & Proceribus predictis, ſup dictis negotiis tractatur. veſtrumq; Conſilium impenſur' Et hoc ſicut nos & honorem noſtrum, ac ſalvationem & defenſionem Regni & Eccleſiæ prædictorum, Expeditionemque dictorum negotiorum diligitis, Nullatenus omittatis. Teſte meipſo apud Weſtmon. die Novemb. anno regni noſtri Angl. &c.

The like Writ is to be made to every Biſhop, Mutatis mutandis.

Alſo Writs are directed to the Sheriff of every Shire, for the chooſing of Knights, and Burgeſſes, of the Parliament.

The form of the Writ is as followeth.

Carolus Dei gratia, &c. Vicecom̃ Com *Cantabr.* ſalutem. Quia de adviſamento & aſſenſu Conſilii noſtri pro quibuſdam arduis & urgentibus negotiis, nos, ſtatum, et defenſionem regni noſtri Angliæ et Eccleſiæ Anglicanæ concernent' quoddam Parliamentum noſtrum apud Civitatem noſtram Weſtmon. xij. die Febr. ꝓxim̃ futurum teneri Ordinavimus, Et ibidem cum Prælatis, Magnatibus, & Proceribus dicti regni noſtri colloquium habere et tractatum, Tibi præcipimus firmiter injungentes quod facta Proclamatione in proximo Comitatu tuo poſt receptionem hujus brevis noſtri tenend de die & loco prædict' duos milites gladiis cinctos, magis idoneos et diſcretos Comitatus prædicti, Et de qualibet Civitate Comitat' illiũs duos Cives, Et de quolibet Burgo duos Burgenſes de diſcretioribus et magis ſufficientibus libere & indifferenter ꝑ illos qui ꝓclam̃ hujuſmodi interfuer' juxta formam ſtatutorum inde edit. et ꝓviſ. Eligi facias, Et nomina eorundum Militum, Civium, & Burgenſium, ſic electorum, in quibuſdam Indentur. inter te & illos qui hujuſmodi Electioni interfuerint inde conficiend, ſive hujuſmodi Electi præſentes fuerint vel abſentes, inſeri; Eoſque ad dict' diem & locum venire fac. Ita quod iidem Milites plenam & ſufficientem poteſtatem pro ſe & Communitate Comitatus præd. Ac dictos Cives et Burgenſes, pro ſe et Communit. Civitatum & Burgorum præd diviſim ab ipſis habeant, ad faciend & conſentiend hiis quæ tunc ibidem de Communi Conſilio dicti regni noſtri (Deo favente) contigerint Ordinari ſup negotiis antedictis; Ita quod pro defectu poteſtatis hujuſmodi, ſeu ꝓpter improvidam Electionem Militum, Civium, & Burgenſium prædictor', dicta negotia infecta non remaneant quoviſmodo. Nolumus autem quod tu, nec aliquis alius Vicecomes dicti regni noſtri aliqualiter ſit Electus. Et Electionem illam in pleno Comitatu factam diſtincte & apte ſub Sigillo tuo, et Sigillis eorum qui

qui Electioni illi interfuerint, nobis in Cancellariam noſtram ad dict. diem & locum certifices indilate, Remittens nobis alteram ptem Indenturar. prædictarum præſentibus Conſut' una cum hoc breve. Teſte meipſo apud Weſtm. die Novembr. Anno regni noſtri Angl. &c.

The forms of the Sheriffs Return upon this writ, As alſo of the Indentures between the Sheriff and the Freeholders, And of the Indentures between the Sheriff and Burgeſſes. See hic Cap. 57.

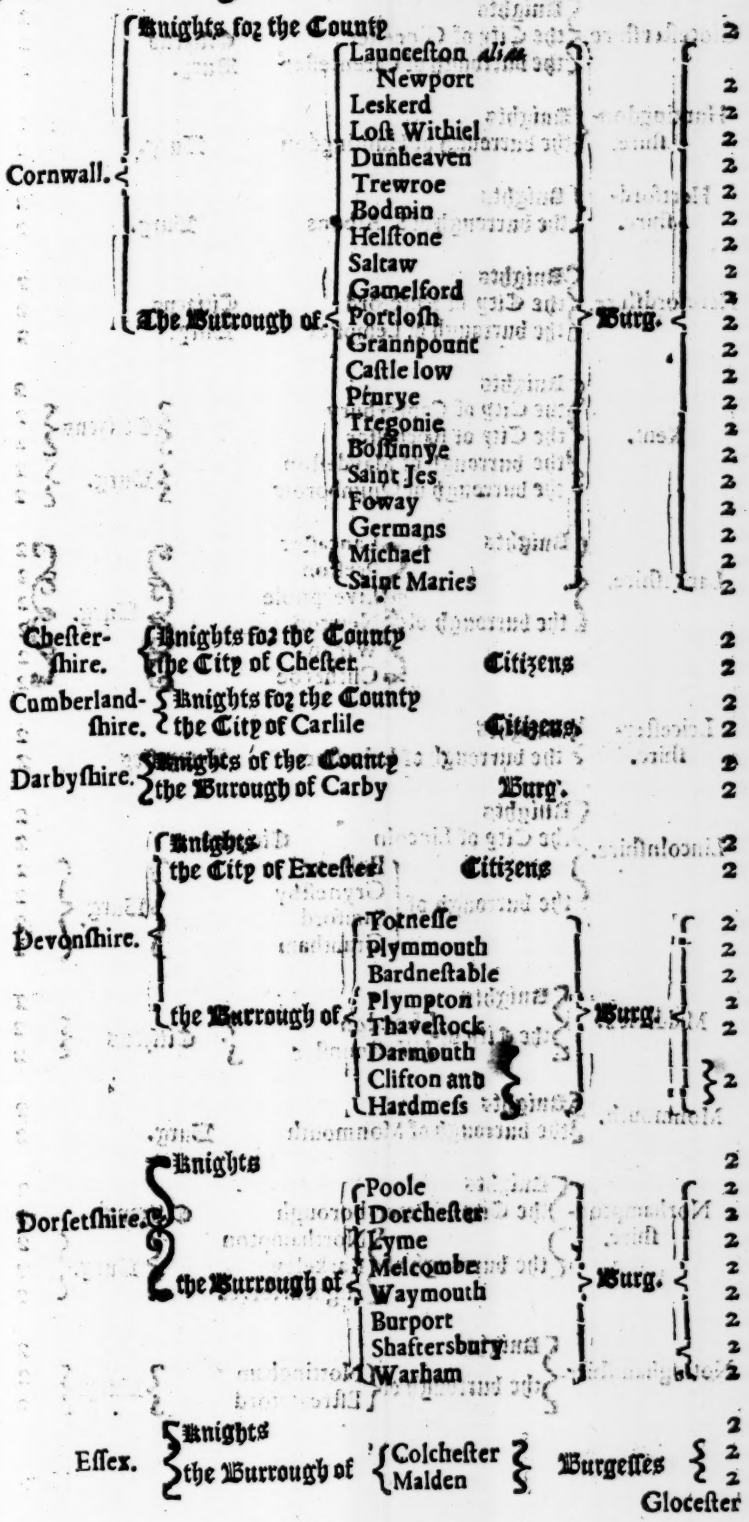
And note, that where the afozeſaid Wzit foz Summoning of the Parliament hath in it theſe wozds, De qualibet Civitate Comitatus illius duos Cives, that is to be intended where the City is no County in it ſelf. Foz if it be a County of it ſelf (as London, Norwich, and ſuch,) then the Wzit ſhall be directed to them, as it ſhall be to the Sheriffs of other Counties. Cromp. author. des Courts fol. 3.

And ſo every City which is a County in it ſelf, ſhall have two Knights oz Citizens, beſides ſuch Knights as are foz the County in which the City is: As the City of Norwich ſhall have two Knights oz Citizens, and the County of Norff. (foz the ſame County) ſhall alſo have two Knights, & ſic de ſimilibus. Cromp. author. des Courts 28.

But foz that (by the wozds of the fozmer Wzit) the Sheriff is to cauſe to be choſen, and is to Return de qualibet Civitate Com duos Cives, & de quolibet Burgo duos Burgenſes, &c. And again, foz that by the afozeſaid Stat. of 5. R. 2. 4. and 8. H. 6. & 23. H. 6. it ſeems to be ſo penal to them, if any Sheriff ſhall leave out of his ſaid Returns (of Wzits of the Parliament) any Cities oz Burroughs, which be bound and of ancient times were wont to come to the Parliament, I have therefoze here inſerted the names of all the Counties, Cities, Burroughs, and Pozts, which do ſend Knights, Citizens, Burgeſſes, and Barons, to the Parliament of England, as I find them in Mr. Crompton.

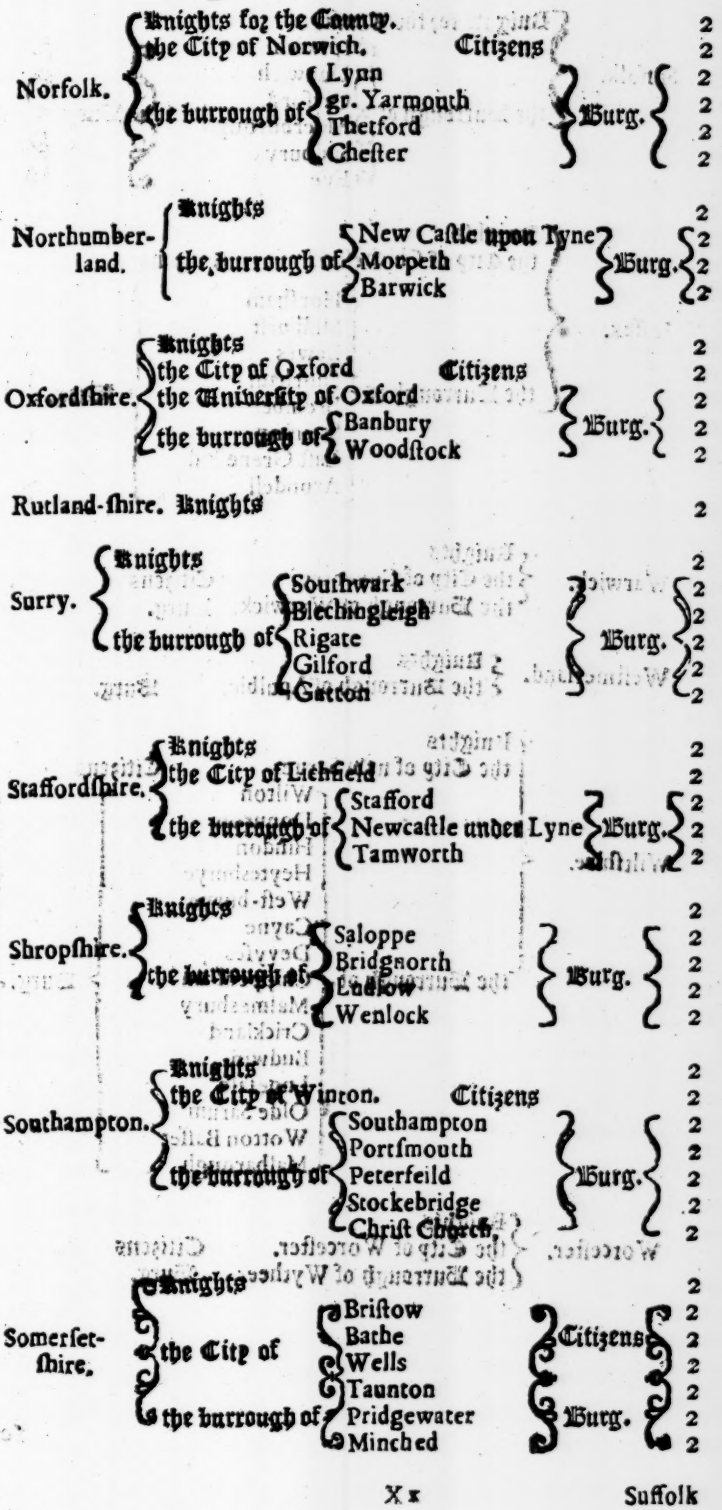
Bedfordſhire.	Knights foz the County		2
	The Barrough of Bedford,	Burgeſſes	2
Barkſhire.	Knights foz the County		2
	the Burrough of New-Windeſore	Burg.	2
	the Burrough of Reeding		2
	the Burrough of Wallingford		2
	the Burrough of Abington		2
Buckingham-ſhire.	Knights foz the County		2
	the Burrough of Buckingham	Burg.	2
	the Burrough of Wickombe		2
	the Burrough of Alesbyrry		2
Cambridge-ſhire.	Knights foz the County		2
	foz the Univerſity of Cambridge	Burg.	2
	foz the City oz Burrough of Cambridge		2

Corn-


Cornwall.
Knights for the County 2
The Burrough of
Launceston alias Newport 2
Leskerd 2
Loſt Withiel 2
Dunheaven 2
Trewroe 2
Bodmin 2
Helſtone 2
Saltaw 2
Gamelford 2
Portloſh 2
Grannpount 2
Caſtle low 2
Pturye 2
Tregonie 2
Boſſinnye 2
Saint Jes 2
Foway 2
Germans 2
Michael 2
Saint Maries 2
Burg.
Cheſter-ſhire.
Knights for the County 2
the City of Cheſter Citizens 2
Cumberland-ſhire.
Knights for the County 2
the City of Carlile Citizens 2
Darbyſhire.
Knights of the County 2
the Burough of Carby Burg. 2
Devonſhire.
Knights 2
the City of Exceſter Citizens 2
the Burrough of
Totneſſe 2
Plymmouth 2
Bardneſtable 2
Plympton 2
Thaveſtock 2
Darmouth
Clifton and
Hardmeſs 2
Burg.
Dorſetſhire.
Knights 2
the Burrough of
Poole 2
Dorcheſter 2
Lyme 2
Melcombe 2
Waymouth 2
Burport 2
Shaftersbury 2
Warham 2
Burg.
Eſſex.
Knights 2
the Burrough of
Colcheſter
Malden
Burgeſſes 2 2
Gloceſter

Glocestershire.	Knights		2
	the City of Glocester	Citizens	2
	the burrough of Cirenteſter	Burg.	2
Huntingdonſhire.	Knights		2
	the burrough of Huntingdon	Burg.	2
Hertfordſhire.	Knights		2
	the burrough of S. Albons	Burg.	2
Herefordſhire.	Knights		2
	the City of Hereford	Citizens	2
	the burrough of Lempſter	Burg.	2
Kent.	Knights		2
	the City of Canterbury	Citizens	2
	the City of Rocheſter	Citizens	2
	the burrough of Maydeſton	Burg.	2
	the burrough of Quimborow	Burg.	2
Lancaſhire.	Knights 2		
	the burrough of Lancaſter	Burg.	2
	the burrough of Preſton	Burg.	2
	the burrough of Liverpoole	Burg.	2
	the burrough of Newton	Burg.	2
	the burrough of Wigan	Burg.	2
	the burrough of Clitheroe	Burg.	2
Leiceſterſhire.	Knights		2
	the burrough of Leiceſter	Burgeſſes	2
Lincolnſhire.	Knights		2
	the City of Lincoln	Citizens	2
	the burrough of Boſtone	Burg.	2
	the burrough of Gryneſtby	Burg.	2
	the burrough of Samford	Burg.	2
	the burrough of Grantham	Burg.	2
Middleſex.	Knights		2
	the City of London	Citizens	2
	the City of Weſtminſter	Citizens	2
Monmouth.	Knights		2
	the burrough of Monmouth	Burg.	2
Northampton-ſhire.	Knights		2
	the City of Peter-borough	Citizens	2
	the burrough of Northampton	Burg.	2
	the burrough of Karkeley	Burg.	2
	the burrough of Higham ferres	Burg.	2
Notinghamſhire.	Knights		2
	the burrough of Nottingham	Burg.	2
	the burrough of Eſtreateford	Burg.	2

Nor-


Norfolk.
Knights for the County. 2
the City of Norwich. Citizens 2
the burrough of Lynn, gr. Yarmouth, Thetford, Chester. Burg. 2 2 2 2
Northumberland.
Knights 2
the burrough of New Castle upon Tyne, Morpeth, Barwick. Burg. 2 2 2
Oxfordshire.
Knights 2
the City of Oxford Citizens 2
the University of Oxford 2
the burrough of Banbury, Woodstock. Burg. 2 2
Rutland-shire. Knights 2
Surry.
Knights 2
the burrough of Southwark, Blechingleigh, Rigate, Gilford, Gatton. Burg. 2 2 2 2 2
Staffordshire.
Knights 2
the City of Lichfield 2
the burrough of Stafford, Newcastle under Lyne, Tamworth. Burg. 2 2 2
Shropshire.
Knights 2
the burrough of Saloppe, Bridgnorth, Ludlow, Wenlock. Burg. 2 2 2 2
Southampton.
Knights 2
the City of Winton. Citizens 2
the burrough of Southampton, Portsmouth, Peterfeild, Stockebridge, Christ Church. Burg. 2 2 2 2 2
Somersetshire.
Knights 2
the City of Bristow, Bathe, Wells, Taunton. Citizens 2 2 2 2
the burrough of Pridgewater, Minched. Burg. 2 2

Suffolk.	Knights for the County			2
	the Burrough of	Ipſwich	Burg.	2
		Dunwich		2
		Ortford		2
		Alderburough		2
		Sudbury		2
		Eye		2

Suſſex.	Knights			2
	the City of Chichester.	Citizens		2
	the Burrough of	Horſham	Burg.	2
		Midhurſt		2
		Lewes		2
		Shorham		2
		Brember		2
		Steining		2
		Eaſt Greneſted		2
		Arundell		2

Warwick.	Knights		2
	the City of Coventry.	Citizens	2
	the Burrough of Warwick.	Burg.	2

Weſtmerland.	Knights		2
	the Burrough of Apulbie.	Burg.	2

Wiltſhire.	Knights			2
	the City of new Sarum.	Citizens		2
	the Burrough of	Wilton	Burg.	2
		Donuron		2
		Hindon		2
		Heytesburye		2
		Weſt-burye		2
		Cayne		2
		Devyſes		2
		Chippenham		2
		Malmesbury		2
		Crickland		2
		Budwin		2
		Lugeſale		2
		Olde Sarum		2
		Wotton Baſſet		2
		Malbarough		2

Worceſter.	Knights		2
	the City of Worceſter.	Citizens	2
	the Burrough of Wythee.	Burg.	2

Yorkshire.
- Knights of the County 2
- the City of York. Citizens 2
- the Burrough of:
  - Kingston upon Hull — Burg. 2
  - Knaresborough 2
  - Scarborough 2
  - Ripton 2
  - Hudon 2
  - Burrowbridge 2
  - Thuske 2
  - Aldeborough 2
  - Beverley 2

Barons of the Cinq Ports
- Hastings, Winchelsey, Rye, Rumney — Burg. 2, 2, 2, 2
- Dover, Sandwich, Hithe — Burg. 2, 2, 2

Wales.
1. Angleſey. Knights 1; the Burrough of Beawmares. Burg. 2
2. Carmarden. Knights 1; the Burrough of Carmarden. Burg. 1
3. Carnarvan. Knights 1; the Burrough of Carnarvan. Burg. 1
4. Cardigan. Knights 1; the Burrough of Brecknock Burg. 1
5. Denbigh. Knights 1; the Burrough of Denbigh. Burg. 1
6. Flynt. Knights 1; the Burrough of Flint. Burg. 1
7. Glamorgan. Knights 1; the Burrough of Cardiff. Burg. 1
8. Merioneth. Knights 1; the Burrough of Haverford weſt. Burg. 1
9. Mount-gomery. Knights 1; the Burrough of Mount-gomery. Burg. 1
10. Penbrooke. Knights 1; the Burrough of Penbrooke. Burg. 1
11. Radnor. Knights 1; the Burrough of Radnor. Burg. 1

The total Number of the Neather Houſe of Parliament:

ſc.
- Knights 90
- Citizens 46
- Burgeſſes 289
- Barons 14

Total 439

The Knights fees or wages, &c.

Also Sheriffs when they have received (letters or) writs for the levying of expences of the Knights of the Parliament, at the next County Court, after the receit of these letters, ought to make open proclamation, that the Coroners, and every chief Constable of the said County, and Bayliffs of every Hundred of the same County, and also all other which will be at the assessing of the wages of the Knights of the Shires, shall be at the next County there to be holden to assesse the said wages: and the Sheriff, Under-sheriff, Coroners, and Constables, or Bayliffs of Hundreds, ought to be there in person to lesse the wages, upon pain of forty shillings to every one that maketh default; And then the Sheriff or Under-sheriff, in the presence of them that shall come, and of the Suters of the same County, (then being there in full the County) well and duly ought to assesse every Hundred to that assessable, at a certain sum by it self, and after they ought to assesse every Village to that assessable, within the Hundreds, with a certain sum, and if they shall make any assessement otherwise, they shall forfeit for every default twenty pound to the King; and besides ten pound to any man which will sue in this case, with treble damages, &c. P. Parliament 12.23 H.6.c.11. Cromp. 207.

Queux persons attender.

But every Hundred must be so assessed by the Sheriff, &c. (to the payment of the said wages) so that the whole sum of all the Hundreds do not exceed the sum which shall be due to the said Knights: and every Village must be so assessed, so that the whole sum of all the Towns within any of the said Hundreds, do not exceed the sum assessed upon the Hundred of which they be, upon the pains before limitted. ibm.

It seemeth that every Knight of the Shire is to have the allowance of xiij s. iiij d. by the day, to be paid by the County (as aforesaid) whereof he is Knight. Powell fol. 223.

But Barons of the Cinque Ports, and Burgesses, have not used to have above x s. a piece by the day. Powell ibm.

Also if any Sheriff, Under-sheriff, Bayliff, or other Officers shall levy (for the cause aforesaid) more money of any Village, than that whereunto they be assessed, they shall forfeit (for every default) to the King twenty pound, and ten pound to any other which will sue for the same, besides treble dammages for the cost of their sutes. 23.H.6.c.11.

The Sheriff well and duely shall levy the moneys so assessed upon the Villages as speedily as they well may after the said assessing; and the same shall deliver to the said Knights according to the said writs upon the penalties aforesaid; And the Sheriff may distrein for the same F. Avow. 260. Ibid.

But such expences of Knights shall be not assessed nor levied for any other Villages, seignories or places, but of such whereof it hath been anciently levied. See 8. R. 2. Fitz. Avow. 260. Ibid. Register 191, 192.

Also (it seemeth) that the Freeholders and Tenants of such Lords, &c. as come to the Parliament, are not to be assessed to such charges for their tenancies or lands holden of such Lords, except they have been so charged time out of mind. And yet by the Statute Anno 12. R. 2. cap. 12. if any other Lord, or any other man Spiritual or Temporal, hath purchased any lands, tenements or other possessions that were wont to be contributary to such expences, before the time of their said purchase, the said lands and tenements, and the tenants of the same, shall be contributory to the said expences, in such manner as the said lands, &c. were wont to be before the said purchase. Vide 8. R. 2. Fitz. Avourie. 260. & 11. H. 4. fol. 2. 8. R. 2. Avowrie, 260. 12. R. 2.

But Coppiholders (or Villains) shall not be contributory to the said wages, or expences. Br. pliamt 96. Regiſtr. 261. Fitz. 228. f.

Also the free tenants, and tenants at will in *Auncien Demeſne*, as also

alſo the Lords, ought to be acquitted of payments to the expences of the Knights of the Parliament. Fitz. 14. e. Br. Aun. Dēc. 43. & Priviledg. 56. & Co. 9. pt preface.

Alſo thoſe Burroughs which do find Burgeſſes to the Parliament, ſhall not pay nor Contribute to the wages or expences of the Knights of the Shire, Except it be by Preſcription. 11. H. 4. fol. 2.

34. H. 8. c. 24. Note, that by the Statute made Anno 34 H. 8. c. 24. the County of Cambridge, and the inhabitants of the ſame, are diſcharged of all ſuch ſums of money, to be levyed or paid for the fees of their Knights of the Parliament for the ſaid County. And the mannor of Burlewas lying in Madingly in the ſaid County of Cambridge, is charged with the payment of 1 li. yearly for ever, at the feaſt of Saint Michael the Archangel, for the ſaid fees or wages of Knights of the ſaid Shire or County: And the Sheriff, and two Knights of the Parliament of the ſaid County, are incorporated for to ſue for the ſame: And the ſaid Knights, and the ſurvivor of them, ſhall have and perceive the ſame to their own uſe towards their charges: And if both the Knights of the ſaid Shire be dead, then the Sheriff of the ſaid ſhire for the time being, ſhall have the ſame rent of 1 li. to his own uſe, untill other Knights ſhall be choſen for the Parliament, &c. *Cambridge-ſhire.*

Note, that for the fees or wages of the Knights for the Parliament, the Sheriff may diſtrain the goods of the Town, or of any of the Town, ſcz. may diſtrain the whole Herd belonging to the Town, or the cattel or other goods of any particular perſon of that Town: 11. Hen. 4. 2. Br. Diſtreſſ. 95. & 8. R. 2. Fitz. Avowry. 206.

Mez quant le vicount (ou auter officer) vient pur diſtreine & veia les avers, ſi lowner del cattel ou auter perſon eux chaſe hors del ville, ſemble le vicount ou officer ne poet eux diſtreyne in auter ville. Vide 16. E. 4. 10. Br. Diſtr. 51.

Note alſo, that the Sheriff or other Officer may ſell the diſtreſſe taken by them for the fees, wages, or expences of the Knights of the Parliament: ſee hic antea tit. The Kings Debts.

For Knights to be choſen for the xij Counties of Wales, and Burgeſſes for every Burrough-town, and the Returning of them by their ſeveral Sheriffs, and for their Knights fees, and Burgeſſes fees. Vide Stat. 27. H. 8. cap. 26.

The Sheriff of every County there, ſhall gather the wages of the Knights, &c. And the Mayor and other head Officers, of Cities and Burroughs there, ſhall gather their wages of the Burgeſſes, &c. 35. H. 8. c. 11.

Alſo for Knights to be choſen for the County Palatine of Cheſter, and Burgeſſes for the City of Cheſter; And the Returning of them by the Sheriff there, and for their wages or fees, &c. Vide Stat. 34. H. 8. c. 13.

CAP. 93.

The Sheriffs dutie in executing the writ of Rediſſeiſin.

Merton 20. H. 3. c. 3. Fitz. 188. y. & 190. 2.

WHere a man hath recovered any lands, rent ſervice, rent charge, or rent ſeck, common, or other tenements (by Aſſiſe of Novel diſſeiſin, Mortdaunceſter, Juris Utrum, vide Co. L. 254. or other action, which paſſe by Juries and verdicts, or by confeſſion of the diſſeiſor, or by any other manner. Co. L. 154.) and is put in poſſeſſion there- *Rediſſeiſin.*

of

of by the Sheriff (by writ de habere facias ſeiſinam) and after the ſame Plaintiff is rediſſeiſed of the ſame lands, rents, commons, or other tenements by him by whom he was formerly diſſeiſed, then the diſſeiſee ſhall have a writ * to the Sheriff, &c. by which the Sheriff ſhall be commanded, that he, taking with him the keepers of the pleas of the Kings Crown, (ſcz. the Coroners,) and other Knights, in his proper perſon ſhall go unto the lands or tenements, paſture, or grounds whereof the plaint was made, and that he make before them (by the firſt Jurors, and other neighbours and lawful men) diligent inquiſition thereof, and if they find him diſſeiſed again (as aforeſaid) that then the Sheriff ſhall forthwith take ſuch diſſeiſor, and commit him or them to priſon, there to remain untill the King ſhall diſcharge them, &c. And that upon a fine to be made to the King for the offence.

* Scz Breve de Rediſſeiſin.

Inquiſition.

Impriſ.n.

But the Sheriff ſhall execute no ſuch plaint (or thing) without the Kings ſpecial writ. 20. H. 3. c. 3.

Note, that the writ de Rediſſeiſin, is, Scire facias præfatum S. (the diſſeiſor,) & D. qui terram illam nunc tenet, quod Inquiſit. interſint, &c. And therefore the Sheriff (upon this writ) ought to ſummon the ſaid parties (ſc. the diſſeiſor, and the *terr tenant*) to be before him at the time when he maketh this Inquiry; but the ſummoning of the *terr tenant*, ſeemeth only to be, to give in evidence, &c.

And for that by the former ſtatt. of Merton made 20. H. 3. there was no remedy given or provided in caſe where the Sheriff had delivered the party without the Kings Licence, &c. therefore by another ſtatt. made at Marlebr. Anno 52. H. 3. it was ordained, that if the Sheriff ſhall deliver any ſuch perſons as are convicted of Rediſſeiſin, without the ſpecial commandment of the King (or Judgement, &c. of the Kings Court) the Sheriff ſhall be grievouſly amerced, and beſides, the parties ſo delivered ſhall be grievouſly puniſhed for their wrong or treſpaſſe. 52. H. 3. c. 8. Fitz. 189. c. Dyer 61. 2.

Alſo by the ſtatute of Weſtm. 2. (made anno 13. E. 1. cap. 26.) the Rediſſeiſors ſhall not be repleviable by the Common writ. ſc. they ſhall not be delivered or let go out of priſon (by the Sheriff, &c.) by the Common Writ, de Homine Repleg. nor by any other writ, nor without writ, but ſhall remain in priſon until he be diſcharged by the Kings ſpecial commandment, which muſt be in manner following, viz. Where a man is convicted of Rediſſeiſin, he ought to make his fine in the Chancery, and from thence to have a writ directed to the Sheriff, making mention that he hath made his fine with the King for the Rediſſeiſin, and manding the Sheriff to inlarge him, &c. And this was the opinion of the Court (except Inglefield) anno 18. H. 8. fol. 1. for that the words of the ſtatute of Marleb. cap. 8. be that ſuch offendors ſhall not be delivered without the Kings ſpecial commandment, &c. And this ſpecial commandment cannot be but out of the Chancerie: But in the ſame caſe Inglefield held that the Juſtices of the common pleas, having the record before them (by a Certiorare) that the Juſtices there had power to aſſeſſe the fine, and to award ſuch a ſpecial writ out of that Court to the Sheriff, to ſet the priſoner at large: And that ſuch a writ iſſuing out of that Court was the ſpecial commandment of the King; and that the meaning of the ſtatute was only to prohibit the Sheriff to aſſeſſe the fine, & not to prohibit the Juſt. who are Juſtices of record ſo to do, Ideo quære. H. 8. 81. f. 6

Special commandement le Roy.

But note, that the Sheriff is not to diſpute the authority of the Court, &c. See Co. 6. 54. & hic antea fol.

And yet, See Fitz. 190. f. if a man be convicted before the Sheriff of Rediſſeiſin, before he ſhall be delivered out of priſon, he ought

ought to remove the Record into the Kings Bench and there to make his fine with the King, &c.

Nota, *Auxi lon home eſt in priſon come convict de* Rediſſeiſin, *ſes amyes poent vener in Chancery, & mre que tiel hõe eſt impriſon in tiel lieu, & c. per reaſon d'un* Rediſſeiſin, *& que ilz ſont venus, preyont que ilz poynt fayre un Fyne pour luy, accordt al Stat. Et que le Seign. Chancellour voile eſtre pleaſe de granter un bre. al vic. del County lon il eſt impriſon, reherſant que il ad fait un fine devant luy in le Chancery pour le* Rediſſeiſin, *Et commandant le vic. de enlarge luy come avantdit.*

Auxi dicitur *que ſes amyes poent preyer d'aver un bre. direct al vic. cõmandt luy que il priſt un fine del partye iſſint in priſon, & apres de luy leſſer aler alarge.* Vide Regiſter 123. accordt.

Et ſic *ceo fine poet eſtre aſſeſe in le Chancery per le Seign. Chancellour; ou per & devant les Juſtices de lun Bank ou del auter (ilz ayant le Record devant enx come avantdit;) Ou in le pais per & devant le vic. (come ſemble) per force del bre. le Roy; mz nẽy* ex Officio, *nec ſanz bre. le Roy* ut ſup.

Cẽy que eſt atteynt de Rediſſeiſin, *ſerra priſe & miſe in priſon pour la demurrer, tanq; il ad fait gree, ou fine al Roy* ut ſup. *pour le Contempt, Et auxi rendra al party plt ſes damage in* duplo (ſc. *ſes doble damages,*) *Et in le meane temps ſerra ireplegiable, & c. & ceo eſt per force del dit Stat. de Weſtm. 2. 26.*

Si cẽy que eſt atteynt de Rediſſeiſin *ne ſoit deins meſme le County (iſſint que le vic. ne pent luy prender) donq; le Record ſerre remove,* Et Capias *iſſera al vic. del County ou il eſt, & c.*

If a woman covert ſhall commit a Rediſſeiſin, ſhe ſhall be impriſoned by the Sheriff, according to this ſtat. Co. 9. 72.

The reaſon of the puniſhment inflicted by the Law upon Rediſſeiſors, or ſuch as ſhall diſſeiſe others who are in by judgement of Law, is chiefly to avoid oppreſſion, and that there might be end of ſutes, for otherwiſe malitious perſons by their infinite vexations would weary ſuch as have right, and in the end compel them to relinquiſh and give over their right, contrarie to the Rule and reaſon of Law, and to the diſhonor of the Common Laws of this Realm, which utterly abhor infiniteneſſe and protraction or delaying of ſutes. Co. 6. fo. 9.

Weſt. 2. 26. Per ſtatutum de Weſt. 2. cap. 26. *Tiels aver a remedy per brief de* Rediſſeiſin, *queux ont recover per default reddition, ou in aſcun auter manner, ſans recognition* Aſſiſar, ſive Jurator. 13. E. 1. c. 26. *Regule.*

Weſt. 2. 18. *Auxy per meſme le ſtatute* cap. 18. *Tenant per* Elegit *aver a brief de* Rediſſeiſin, ſc. *ſi il ſoit ouſte, & c. il primes recovera per briefe de* Novel Diſſeiſin, & poſtea *per bre. de* Rediſſeiſin, *ſi beſoigne.* Fitz. 189. i.

Auxi tenant per ſtatute merchant ou ſtaple, avera briefe de Rediſſeiſin, &c. ſtat. de mercatoribus, 13. E. 1. Fitz. 189. i.

Et iſſint ſemble de touts anters, que ſont eſtate in terres, & c. per Judgment de Ley. Vide termes del Ley tit. Elegit.

Qt bre. de Rediſſem ne gt; Et vers que ne giſt. Co. L. 154. *Et pour que gt. & p. qe ney, Et de ql choſe,* ibid.

Auxi ce Stat. extend al Rent charge ou Rent Seck, car coment qe ilz ſont enconter Common Droit, uncar hõe ad freehold in ex. Co. L. 154.

Les parolz del ſtat. de Merton *ſont* ſic, Et ipſe diſſeiſitus p vic ſeiſinam ſuam habuerit, &c. Ex quo notandum eſt *que ſi le diſſee entree ſanz eſtree miſe in poſſeſſion per le vic. qe il navera brief de Rediſſeiſin; Et pur ceo ſi le diſſeſee recover ſon ſeiſin, & puis enter & apres eſt ouſte per meſme le diſſeiſor, icy il navera briefe de* Rediſſeiſin, *pur ceo que navoit ſeiſin deliver a luy per le vic.* (*per brief de* Habere fac. ſeiſinam) *mes ad enter luy meſme apres ſon recoverie.* Vide Br. Rediſſeiſin 5.

Si

Si bre. de droit Patent soit prot in Annc. Demesme, Et le plt recov. in ceo case si le plt soit apres Redisseiſ. &c. le plt. ne poet aver bre. de Redisseisin, *pur ceo que le vic. ne pent Enter in Annc. Demesne; uncar* vide hic cap. 70. & 72. *que sur bre. le Roy, le vic. poet Enter en semblable Cases.*

Auxi si le Seign. d'un Franchise aver Counsauz in Assise, & puis le plt est Redisseise *deins mesme le Franchise, semble icy que le vic. poet Enter in le Franchise, & fera Execution, &c. eo que ceo bre. de* Redisseisin, *est un* Non Omittas, &c. *Et uncar le vic. icy doit Escrier al Bayliff del Franchise pur faire venir le Jury.* Abr. d'ass. 148.

Note *que sur briefe de* Redisseisin *direct al vicount, le vic' doit seer in proper person, (& nēy per Attorney, nec per son Southvic':) car icy il est fait Judge de record.* 7. H. 7. 4. Br. Parliam. 95. & hic cap. 4.

And although upon this writ of Redisseisin, the High Sheriff must sit in his own person, and be therein sole Judge, yet he must have two (Coroners at the least) to sit with him; for the words of the stat. of Merton are further, Et ideo mandetur vic. quod assumptis secum Custodibus placitorum Corone, Dñi Regis, &c. Now these Custodes placitorum Corone be the Coroners, who must also joyn with the Sheriff in making up of the Record.

Sur briefe de Redisseisin, *si le vicount prieigne linquisition devant luy mesme sole, Ou devant luy mesme & un Coroner, & le* Redisseisin *est trove, & le dissor' ouste, il avera Assise: Et si le dissor' in tiel case soit commit al prison per le vic. il avera action de faux imprisonment de ceo vers le vicount. Car le inquisition fuit prise* coram non judice; *car le stat. de* Merton c. 3. ac etiam *le briefe de* Redisseisin *direct al vic. dit* quod assumptis tecum custodibus placitor' Coron', &c. *Et ceste parol* (custodibus) *in le plural number ne poet este satisfie ove un Coroner, si sont plusors que un in le County, mz* duorum numerus sufficit. Vide Co. 10. 103. & 23. Ass. pl. 7. Br. Redisseisin 3. & Mr. Plo. fol. 393. Fitz. Rediss. 2. Stamf. 53. c.

Mz. in ceo case les Coroners ne sont nye Judges de Record, mz ayde al vic. ut supra, *& le vic. solement est Judge, &c. Car si bre. de Error soit prot de cel Enquiry, le Record ne rehercea nye que ceo fuit fait devant les Coroners, mz devant le vic.*

Et si le vic. voile fayre un Record sur le Redisseisin, *& les Coroners voila faire auter, les Justices ne voilent prender le Record fait per les Coroners mz le Record fait per le vic. uncar* Br. Deputy 20. *le vic. & Coroners judger ceo.*

Auxi les parols del dit Stat. de Merton *sont,* quod assumptis secū custodib. placitorum, & aliis legalibus militibus, &c. *per quelx parols semble que le vic. doit prender auxi ove luy, auters Chivalers, ou loyal homes inhabitantes prope a mesme le Tenement, &c. de que le pleynt est fait, Et devant les Coroners, & eux, per les primer Jurors, & per auters vicines, ilz feront le Inquisition.*

Mz cel Inquisition ou Enquiry ne serra, le quel le plt fuit dissei ou nēy, mz le quel il suit Redisseise.

Et le vic. doit fair un Record, sur le Redisseisin trove per tiel Inquisition, Et de Retorne ceo, fc. *que il ad enquire, &c. in le presence de tiel Coroners, & tiel auters Loyal hōes, &c. per les primer Jurors, & per auters, &c.* 23. Ass. 7.

Also the Sheriff must return quod Accessit ad locum or ad Tenementa infrascript', & not quod Accessit ad villam, 11. H. 4. 6. But he may return quod apud S. (being the town where the land lyeth) fecit Inquitionē, &c.

Auxy les parols del stat. de Merton, *sont que il serra inquisition per* primos juratores, & alios, &c. *Et pur ceo covient que sont ij. del primer Jurors al meins, & si touts les primer Jurors sont morts, ou touts forsque un, donq; il serra prise, ne avera* Redisseisin, *&c.* Tamen quære, *car coment*

qu

que tous les primer Jurors ſont morts ſrq; nn, dicitur que pur ceo que le bre de Rediſſeiſin voet, tam de illis qui in prima Jurat. fuerunt, quam aliis, &c. *que pur ceux paralz ſerra intend, ſi aſcun de eux ſoit in vie, que le inquiſition ſerra priſe.* Vide Fitz. Rediſſ. 11. 8. H. 5. 1. Lectur.

Auxi coment que touts les primer Jurors ſont in vie, uncore le vic' prender deux autres al meins; autrement le Inquiſition priſe devant luy eſt coram non judice, *& br'e de errorgira.*

Les primer Jurors ne ſerra priſe in le Rediſſeiſin, *ſinon que ils paſſe ſur le principal del action, & nemy ſur enquirie de damages.*

Le partie poit aver challenge a les auter Jurors, mes nemy al primer Jurors. Vide Br. Chall. 27. & Keil. 125.

Uncar dicitur que on le vic. impannell le Array, la le party n'avera my Challenge al array, pur ceo que le vic. eſt Judge, & per intendment voet faire ovel droit as parties; Et auxi pur ceo que eſt ſrq; Enqueſt de Office. Vide. Kiel. 125. & Lectur.

11. H. 4. f. 6. Co. 8. 152. 7. H. 7. 4. Br. Parliam. 59.

Auxi ſemble per les parols del ſtat. de Merton, ac etiam *per parols del briefe* (in propria perſona, accedat ad terram) *que le vicount doit faire ſon enquiry, & prendre le inquiſition ſur le terre ou tenement, de queux complaint eſt fait, & uncore ſi le vicount viender, & cauſer le Jure de viewer & veier' le lieu, terres, ou tenements, que donque il poit prendre & faire le inquiſition in auter lieu; car les parols del ſtat. & del briefe, eſteant,* quod accedat ad terram, &c. *ceo eſt obſerve per viewer illuc, coment que lenquirie, & verdict ſoit al auter lieu: (mes ſemble doit eſte deins meſmes le ville ou le terre giſt.)* Vide Fitz. Error. 51. 64.

Br. Rediſſ. 5.

In Rediſſeiſin *in divers villes, le vicount & coroner ira al touts les villes, mes ils poit prender lenqueſt a lun villi* tantum ſc. *in quel il pleiſt al vic.* per Ca. 40. Aſſ. p. 23. *Iſſint eſt in briefe denquire de waſt in divers villes,* quod vide hic antea tit. waſt. fol.

11. H. 4. f. 6.

Auxi le vic. poit varier del retorn del bailife, & poit mitter ſur le enqueſt tiels que ne fuer' returne per le bailife, car le vic' meſm' eſt le perſon que fait larray, que auxy eſt Judge in le caſe: Et une' lon le vic' (in tiel caſe) ferr' ſon precept al bailif de retor' le Jury, que retorn' ce, & il mand ce ret' cõe parcell del record, per c' le vic' ad affirme le ret' del bailif & icy ſi le vicount varier del Retorne le Bailife (& prender lenqueſt per autors) eeſt ſemb. deſte error.

Nota que ceſt breve de Rediſſeiſin, noſt que enqueſt de office. Br. Atteynt, 1. & 79.

Le vic' ne poet reſceiver Attorney pur nul party (in Rediſſeiſin) ſanz bre cõe ſemble. Abr. d'aſſ. fol. 148.

Le diſſer in Rediſſeiſin pleder nul plee in barr; Car ſil ad Relz pur le Rediſſeiſin ſemble il avera Audita Querela, *Ou* Superſedeas, *ove un* Certiorare *de remover le matter; Et ſil ſoit inſcoff, il avera Atteynt; Et ſil ad fait fine, il poet aver* Superſedeas, &c. Tamen *ſee que le tenant del terr que eſt eins per title poet pleader, &c.*

Auxi le vic' n'ad poyer de tryer aſcun plee hors de poynt de Rediſſeiſin, Ne accepter aſcun forein plee, mez ſera accords al bre que eſt ſon Commiſſion, &c. Abr. d'aſſ. 147. Keil. 125. Vide.

Si le vic' ne voet Execute ceo bre, la giſt Alias, *& plur. & Attachmt. mez vers les Coroners ſile ne voilt ſervir cel ber, nul remedy.* Fitz. 881. 1.

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where the Sheriff, &c. may break open an house, or break open the doors, &c. to execute the Kings Proces or writ.

When any house is recovered in or by any real action, or by any Ejectione firmæ, there the Sheriff or Officers, upon an habere facias seisinam, or possessionem, may break the house and deliver seisin and possession thereof to the Plaintiff, for that after Judgement it is no more (in right or in the Judgement of Law) the house of the Def. or Tenant. Co. 5. 91.

Yea the Sheriff upon the Habere facias Seisinam, may and ought to Execute the writ, although that indeed an Estranger be seised of the Land, and that neither of the parties to the writ were ever seised thereof. Plo. Mauxels Case. fol. 12. 13.

But the Sheriff nor his Officers cannot justifie the breaking of any mans house to make execution upon a Capias ad satisfaciendum; Nor break any house or chest, &c. to make execution by virtue of a Fieri facias; nor to execute any other the Kings proces upon the body or goods of any person, at the sute of any subject (for any debt, dammage, trespass, or the like, for there it is but a particular interest of the party) and if he do, he is therein a Trespasser. But where the King is a party, there the Sheriff may justifie the breaking of the house to do execution of his proces, if he cannot otherwise execute his proces; And yet first he there ought to make request to have the door opened, and must withall signifie the cause of his coming. Co. 5. 91. & 13. E. 4. 9. Fitz. Barr. 110. Br. Execution. 100. Co. 5. 91. 92.

Note, that in all cases where the King hath any interest, the writ is Quod non omittas propter aliquam libertatem, and therefore the privilege of any mans house will not hold against the King, But where the King hath no interest, but only a common person, There the Sheriff, although he make request to have the doors opened, &c. and that denial be made him to enter, &c. yet he may not break them, and so enter and do execution of his proces, For by such means great inconvenience might arise, that men in the night, as well as in the day, should have their houses broken open, upon any feigned matter. For although that the Sheriff himself be a man of especial note and worth, and his office of great authority and trust, yet wee see by daily experience, that all or the most part of the Kings Writs are served and executed by their Undersheriffs and Bailiffs, which most commonly are persons of small worth and account.

And yet where the Sheriff shall break a mans house, or chest, being lockt, &c. to make execution upon a Venire facias, although he shall be punished as a trespasser for breaking the house or chest, yet he shall not be punished for taking the goods, 18. E. 4. fol. 4. but the execution which the Sheriff so made, is good. Br. Execution. 100. Co. 5. 93.

Note, that in all cases where the door is open, the Sheriff and his Officers may enter into the house, and make execution, at the sute of any subject, either of the body or goods: Co. 5. 92. But if the door be shut to, and only latched, (but not locked nor barred, &c. the Officer may not draw the latch and so enter, per Curiam M. 36. Eliz.

And yet if the door be open, and the sheriff or bayliff come to the house, and sheweth the Kings procels, and offereth to enter to execute the same pro-

proceſſe (being at the ſute of any ſubject) and the owner of the houſe, &c. ſhuts the doore againſt the Sheriff, &c. here the Officer, giving Notice of the cauſe of his coming, and requeſting to have the doores open; may breake open the houſe, if the party refuſeth to open the doore. Vide Co. 5. 92, 93.

I have ſeen the report of a Caſe adjudged in Mich. term An. 17. Jacobi Regis, in Banco Regis Rotul. 1049. betweene White Plt. and Wiltſhure (an underſheriff) Deff. where in an action of treſpaſſe Quare clauſum fregit, domum intravit, oſtium fregit, & ſeras fregit & abjecit, &c. The Deff. for the breaking of the houſe, &c. juſtified as followeth, viz. he pleaded that the Sheriff of that County had made him Underſheriff, and that a Fieri facias was directed unto him, to make execution of the goods of the Plt, And that he made his warrant to five of his bayliffs to make execution, &c. and that his bayliffs found the doore open and entred, and that the Plt. ſhut the doores upon them, and detained them in priſon in his houſe by the ſpace of 24. hours, And that he to deliver the bailiffs did breake the doore, and that he being ſo in peace in the houſe, for the execution of the ſaid writ, he broke open the inward doores, And thereupon the Plt. Demurred; And three objections were made to this Juſtification.

1. For that the authority to the bayliffs was made to five joyntly, or ſeverally, and that two only made the execution.

2. For that according to Semaynes Caſe Co. 5. 92. upon a Fieri fac. in caſe of a ſubject, the Officer cannot breake the houſe of the party to make execution, for his houſe is his caſtle of ſafegard: And admitting that he may breake the firſt doore, yet being entred he cannot breake open the inward doore.

3. Admitting that he may breake the doores, yet it ought to be averred that there were goods within the rooms whereof the doores were broken.

1. To the firſt objection the Council of the Deff. anſwered, that it hath been often adjudged (and named one Abingtons caſe in Banco,) that upon ſuch an Execution and Warrant, the bayliffs, five, four, three, two, or any one of them might execute the ſame, for that it is for the adminiſtration of Juſtice, and for the publick good that Executions be made: And all the Court were againſt the Plt. in this point: And Sr. John Dodrige ſaid, that meer ſtrangers to the Warrant might aid the bailiffs in this caſe.

2. To the ſecond poynt this diverſity was taken, ſc. when an Execution is once lawfully begun, there the Sheriff or his Officers may breake the houſe to make Execution, &c. Otherwiſe when it is not lawfully begun; But here it was lawfully begun, for the outward doore was open, and they lawfully entred into the houſe, ſo that after their Entry the Plt. cannot prevent the Execution, although that he might (peradventure) have prevented it, if that he had ſhut the doore before the entree of the Officer: and for this alſo the caſe of Sr. W. Fiſh was cited, wherein this former diverſity was taken and agreed of for Law. The caſe was this, the Sheriff had a Capias ad ſatisfac. delivered to him againſt Fiſh, whereupon F. was apprehended, and then the ſaid F. made an eſcape from the Sheriff and got into his houſe, and the Sheriff preſently broke open the doore of his houſe, and took him again, and it was adjudged to be well and lawfully done, for that there was a lawful beginning of the Execution before, and that now he purſued the Execution lawfully begun; and all the Court agreed to this diverſity. And Sr. Henry Mountague Chief Juſtice ſaid, True it is that an houſe is a caſtle, for him that dwelleth there, for his repoſe and ſafety, and

that it is privileged against the Execution of the subject, when it is close and the doors shut, yet when in this case the entrée of the Minister of Justice was lawful, and the owner of the house shall abuse this privilege, and shall make resistance, and shall lay his hands, &c. upon the Minister of the Law, he hath thereby lost his privilege, and hath made resistance to the Law, which now will not protect him in such a case, and this is the reason, that everyone which shall kill an Officer in the doing of his duty shall be a murtherer. Dodridge, when a man hath begun a lawful Execution, such as shall resist the same do resist the act of the Law: and the possessions, houses, and lands of every man are chargeable by the Law to such Jurisdiction of the King and his Ministers (as it is in Mauxels Case. Plo. fol. 13.) Sr. Robert Houghton, if one be arrested by the Sheriff, and he escapeth to his own house, and the Sheriff pursueth him, and breaketh open the doors of his house, and taketh him again, and so continueth his first possession of his prisoner, the party shall never take benefit of this his own wrongful escape.

3. And as to the third point the Council of the Deff. answered, that for breaking of the inner doors, they needed not to aver that there were any goods there, for the Officer cannot know that before his entrée, and by intendment a man hath goods in his own house, whereunto Dodridge and Houghton Justices did agrée, and said further, That if the Sheriff were in one room, he may break open another (to execute his writ, &c.) upon refusal to let him go in.

And as to that which was said in this case before, that the Sheriff cannot deliver his bailiffs upon his own authority, but ought to have sued out a writ de Homine Replegiando, Dodridge said, that were against all reason, that the Officer of the Law should be put to such an inconvenience for the execution of his Office. And Judgment was given by the whole Court against the Plt. And Justice Houghton moved that the Court ex Officio would grant out Processe de bene gerendo, and an Attachment against the Plt. for thus abusing of the Officers of the Law.

The Sheriff and other the Kings Officers, which shall enter into any house or land, or shall meddle therewith, to do things requisite for the Execution of the commandment or writ of the King, or of his Courts, Or for the Examination of the titles of the parties complaynants, or the Execution of the rights tried or adjudged, are dispunishable: So that if A. be seised of land in fée upon a good and undefeasible title, and an estranger shall demand this land by a Precipe, against another stranger, and upon this the Sheriff or Officer by virtue of the Precipe cometh upon the land with Summoners, and summons him against whom the Precipe is brought, and after the demandant recovereth against him by default, or by issue tryed, And that by force or virtue of an habere facias seisinam the Sheriff cometh again and putteth him, who hath recovered, in seisin thereof, and then departeth; here A. cannot punish the Sheriff or other Officer, for their first coming, nor for their second coming upon the land, For that the Officer doth nothing but execute the Kings commandment, in manner and form as he had in charge. Plo. Mauxels Case, fol. 13. 14. And if A. shall shut or kéep shut the door of the house so recovered (by default, or by issue tryed, yet the Sheriff by virtue of the Habere facias seisinam, may break open the door and deliver seisin thereof to him which hath recovered, &c. Co. 5. 91. hic antea.

Whether upon an Injunction out of the Chancery for to deliver or yield the possession of an house, directed to the Defendant, and commanding

manding the Sheriff upon an Attachment which is granted at the ſute of the party (out of the Chancery) for not perfoꝛming an Oꝛder of that Court, oꝛ for ſome other contempt) in ſæmeth the Officer cannot bꝛeak open the houſe to take the party ſo offending. Cromp. *Author des Courts.* fol. 33. Tamen quære, foꝛ that the woꝛds of the Attachment are thus, ad reſpond nobis tam de quodam contemptu nobis illat. &c. So as the King ſæmeth to be a party &c. in regard of the contempt.

But upon a Commiſſion of Rebellion out of the Chancery, the Sheriff, oꝛ his Officers (oꝛ the Commiſſioners, may bꝛeak open the dooꝛs oꝛ houſe to appꝛehend the party being therein (whether he be within his own houſe oꝛ in the houſe of any other, if they will not open the dooꝛ, oꝛ deliver him, &c.) Cromp. *Author des Courts.* fol. 47.

Alſo in Execution of the Commiſſion of Bankrupts, the ſaid Commiſſioners, oꝛ any officer oꝛ officers, oꝛ other perſon, by the ſaid Commiſſioners, oꝛ the greater part of them deputed and appointed by their warrant under their hands and ſeals, may bꝛeak open the houſes, chambers, ſhops, warehouſes, dooꝛs, trunꝛcks, oꝛ cheſts of the ſaid Bankrupt, wherein the ſaid Bankrupt oꝛ any of his goods oꝛ eſtate ſhall be, oꝛ reputed to be, and to ſeiſe upon and oꝛder the body and goods, &c. 21. Ja. cap. 19.

But the Sheriff, &c. ought not to bꝛeak open any mans houſe in the Night, to execute any Pꝛoces, oꝛ to do any other miniſterial act, &c. Sæ hic cap. 22.

Alſo it ſæmeth that the Sheriff cannot bꝛeak open a dooꝛ, oꝛ a gate, &c. to diſtrain foꝛ the Kings rent; oꝛ to levy any fine oꝛ amerciament, iſſues, debts, oꝛ other ſuch like duties due to the King, Quære if it be by the Kings Wꝛit oꝛ pꝛoces out of the Exchequer, &c. Sæ hic cap. 19.

The Sheriff may bꝛeak open, oꝛ beat down a Caſtle, foꝛt oꝛ houſe, to make replevy and deliverance of Cattel there impounded, and withholden, &c. Weſtm. 1. cap. 17. Hic cap. 114.

The Sheriff may not bꝛeak open a Cloſe to make a Replevin, where there is a gate, Except that he locked up, &c. 20. H. 6. 30.

Upon a fieri facias if the Officer ſhall bꝛeak open a houſe, dooꝛ, oꝛ cheſt, to take goods in Execution, an action lyeth againſt him, *mes tantum pour le debruiſer.* 28. E. 4. 4.

And note, that in all caſes where the King is a party (as foꝛ Felony, &c.) oꝛ hath intereſt in the buſineſs, the Sheriff and his Officers, if no dooꝛ be open, and that they cannot otherwiſe enter, may bꝛeak open the dooꝛs, oꝛ houſe of the party offending, oꝛ any other houſe where the party is, to arreſt the offendoꝛ, oꝛ to make other execution of the Kings Pꝛoces, &c. Co. 5. 91. 92. 13. E. 4. f. 9.

As if a man be Indited of treſpaſs, and a Capias pro fine be awarded to the Sheriff to take the body of the ſame perſon, The Sheriff may bꝛeak open the party oꝛ offendoꝛs houſe, oꝛ dooꝛs, oꝛ any other mans houſe wherein the offendoꝛ ſhall be, to arreſt the offendoꝛ. And ſo upon Hue and Cry levied after one who hath ſtricken another, ſo as he is in any danger of death. 7. E. 3. fol. 16. Co. 5. 91. 92. 27. Aſſ. p. 35.

If a man be outlawed of treaſon, oꝛ felony, oꝛ in any perſonal action, whereby a Capias utlagatum ſhall be directed to the Sheriff to appꝛehend and take him, the Sheriff, &c. may bꝛeak open the houſe to appꝛehend him.

Sæ moꝛe hereof in my Country Juſtice, titulo forcible entrie.

But note, that though the King be a party, yet the Sheriff and his Officers, &c. befoꝛe they ſhall oꝛ may bꝛeak open any houſe oꝛ dooꝛs, ought to ſignifie the cauſe of their coming, and to make requeſt that the dooꝛs may be opened, &c. Co. 5. 91.

Alſo

Also note, that no mans house shall be any privilege to or for any stranger; Nor shall extend to protect any person that shall be there, or flie thither, Nor to protect the goods of any other that shall be brought or conveyed thither, to prevent any lawful execution, or to escape the ordinary proces of Law. But the privilege of every mans house shall extend only to himself and his family, And to and for his proper goods, or to such as are there lawfully and without fraud or covin: And therefore if the Sheriff having proces to be executed upon the body or goods of any stranger, do desire to have the door opened, or to have the body of the party flying, &c. thither, or the goods of another brought thither, to be delivered unto him, After such request made to open the door, or to have the body, or goods, of such person delivered him, if denial or refusal be made, or that it be not done, Then the Sheriff or his Officers may break open the house, and may execute the Proces, without any danger of law. Co. 5. 93.

Also if the Sheriff do break open the house (in any the cases aforesaid) where any of the doors of the same house be open whereby he may enter, or where he may open the door by a key, or otherwise, without breaking the house or door, he is a trespasser, and subject to an Action.

CAP. 95.

Where the *Sheriff*, &c. *may take* Posse Comitatus.

Posse Comitatus.

The Sheriff, or his Undersheriff, or Bailiff, &c. may (nay ought if need be) to take the power of the Countie, (scz. what numbers of persons they shall think good; to aid him, or them, to execute in every behalf the Kings Proces or Writ, (be it by a Writ of Execution, Replevin, Capias, &c. or any other Writ) it being the Kings commandement; And such as shall not assist the Sheriff, &c. therein, beng required, shall pay a fine to the King. Bro. Parliament & fines 37. & Trespasse 266.

The statute of Westminster 2. cap. 39. is direct and full in this point, saying, Sheriffs make many times false answers, returning that they could not execute the Kings precept for the resistance of some great man; wherefore let the Sheriff beware from henceforth, for such manner of answers redound much to the dishonor of the King. And as soon as his Bailiffs do testifie that they have found such resistance, forthwith all things set a part (taking with him the power of the Shire) he shall go in proper person to do execution, &c. See hic antea fol. West. 2. 13. E. 1. 39.

But it seemeth by this stat. that the Sheriff shall not take the power of the County, but only post queremoniam factam, and not before, And yet is holden that the Sheriff may do it by the Common Law, for quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. See 3. H. 7. fol. 1. & Co. 5. 115.

Also by the Statute of West. 1. cap. 17. If a distresse be impounded in a castle or fortresse, and detained, the Sheriff or Bayliff taking with him the power of the shire, &c. may cause the said castle or fortresse to be beaten down. See hic postea. Westm. 1. 17.

And by the Book 19. E. 2. Fitz. Execution 147. upon a writ of Seisin, the Sheriff returned that he could not deliver seisin for resistance, and for that the Sheriff did not take the power of the County, according to the statute, he was amerced twenty marks.

So

So in a Replevin, if the Sheriff return that the cattel are in a fort, or a castell, so as he cannot make deliverance, he shall be amerced, causa qua supra.

Lamb. 309. Note, where the Sheriff, or other Officer, is enabled to take the power of the County, they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Travelmen, Servants, and Apprentizes, and of all other such persons, being above the age of 15. years, and that are able to travell: to which purpose also, see the Sheriffs patent of Assistance (here before fol.) whereby there is commandment given to all Arch Bishops, Bishops, Dukes, Earls, Barons, Knights, and all other the Kings subjects within the same Countie, to be aiding to the Sheriff in whatsoever belongeth to his Office.

And in such cases they are not appointed any number, but it is referred to the discretion of the Sheriff, &c. what number they will have to attend upon them, and how, and in what manner they shall be armed, weaponed, or otherwise furnished.

3 H. 7. 1. The Sheriffs bailiff to execute a Replevy, took with him three hundred men armed (modo guerrino) sc. with Brigandines, Jackes, and Guns, and it was holden lawful; for the Sheriffs officer hath power to take assistance, as well as the Sheriff himself. Br. Ryots 2. Vide Co. 5. 72.

11 H. 7. 17. Also the Sheriff may take Posse Comitatus, in defence of the Realm, when any of the Kings enemies shall invade the land, &c. See here fol.

The Sheriff also may take Posse Comitatus, (any number that he shall think meet) to pursue, apprehend, arrest and imprison traitors, murderers, robbers, and other felons, or such as do break, or go about to break, or disturb the Kings peace.

And it seemeth, that in all cases where the Sheriff may take Posse Comitatus, there also he may make Proclamation, commanding in the Kings name, all persons (meet) to come and go with him, and to aid him, for the apprehending of traitors or felons, suppressing of Riotters, pacifying of an Affray, or the like, Or in any other thing belonging to his Office, where he shall find any resistance.

The Sheriff, &c. upon any lawful Warrant, for the apprehending of any Popish Reculant, &c. may take Posse Comitatus. See the statute 3. Ja cap. 4.

P. Recusants 52. A man demands the Peace in Chancery against a great Lord, and hath a Supplicavit directed to the Sheriff, &c. there if need be, the Sheriff may take Posse Comitatus, to aid him to arrest such a Lord, &c.

The Sheriff also may take Posse Comitatus, to execute the precept or warrant of the Justices of Peace: as in case of forcible entrie, to make restitution, &c.

But it seemeth in such cases where the power of the County is to be raised or taken, that the Bailiff must have warrant from the Sheriff to do it, and that he must be a known Bailiff or Officer, that must do it.

Note, that the Sheriff or his Officers may take the power of the County by force of the Common Law, and that the statutes of Marl. cap. 21. & Westminster 1. cap. 17. & Westminster 2. cap. 39. are but a confirmation of the Common Law, for the taking of the power of the County by them, and that as well for the safegard of their persons, as to execute the Kings Writ and Commandment by Writ. 3 H. 7. fol. 1.

And every man is bound to aid and assist the Sheriff, and to maintain him

him in his Office in the Execution of the Kings Writ, for this is the commandment of the King. 3. H. 7. 1. Br. tresp. 266.

Also the Sheriffs Bayliffs (or his servant, having the Sheriffs Warrant) hath the same authority that the Sheriff himself hath, and every man is bound to aid them in their business, and that both by the Common Law, and Common Reason.

And every man is sworn (saith Keble) to be aiding to the Sheriff in his business; and if they do it not at the request of the Sheriff, they shall be fined. 3. H. 7. 1. Br. fine per Contempts. 37. & Trespas. 266. See also the Stat. of 2. H. 5. cap. 8. which inflicteth both fine and imprisonment upon such as shall not aid the Sheriff, they being thereunto required.

If the Sheriff (or his Undersheriff, Bayliff, or servant having the Sheriffs Warrant) shal take Posse Comitatus with them, without any sufficient cause, yet such as therein shall be ayding to the Sheriff, or his said Officers or servant, may well justifie such their doing by the commandment of the Sheriff or his said Officers, &c. 5. H. 7. 4. 5.

CAP. 96.

Bailement of Prisoners by the Sheriff.

Baylement. BAylement is properly the freeing or letting at liberty, of one arrested, or imprisoned, upon action, either Civil or Criminal, upon sureties taken for his appearance at a day and a place certainly assigned, Bracton. and cometh of the French word Bailler, i. tradere, to deliver up, because he is then delivered into the hands of them, that bind themselves for his forth coming. Master Manwood maketh a great difference, between bail, and mainprise; for (saith he) he which is mainprised, is always said to be at large, and to go at his own liberty, out of ward, after he is let to mainprise, untill the day of his appearance: But it is otherwise where a man is let to bail, until a certain day, for there he is always accounted by the Law to be in the ward or custodie of his sureties, for the time they undertook for him; and they may, if they will, keep him in ward or prison, all that time: So that he that is bailed, shall not be said to be at large, or at his own liberty. See Master Lamberts Justice of Peace, tit. Bailment, agreeing with this difference. *Mainprise.* Mirr.

But in our Law these two words Bailment, and Mainprise, are notwithstanding indifferently used, to expresse that surety which the prisoner is to find in such case. Lamb. Ibidem.

And yet Bailment seemeth to implie the delivery, and Mainprise the receiving of the prisoner, &c. and so these two words to be Relativa.

Detaine persons baileable. If the Sheriff, Undersheriff, or Bailiff, &c. shall detain any prisoners who are baileable, after they have offered sufficient sureties, the Sheriff, &c. shall be therefore grievously amerced to the King. 3. E. 1. cap. 15. See 23. H. 6. cap. 10.

Baile persons not baileable. If the Sheriff, Undersheriff, or other Officer, shall let to bail any persons which are not by them bailable, they are also punishable therefore by the Judges of gaol delivery. See the Statutes, 3. E. 1. c. 15. 27. E. 1. c. 3. 4. E. 3. c. 2. & 23. H. 6. c. 10. P. Main. 3. 4. Fitz. 251. i.

If the Sheriff shall let a man to mainprise, in case where he is not Painpernable, it is an Escape. 25. E. 3. Abr. d'ass. 74. Fitz. Escape 4. & Coron. 246.

And

And if the priſoner were in for Felony, and the Sheriff ſhall deliver him upon Bail or Mainprize, this ſeemeth to be Felony in the Sheriff; for that as it is a voluntary act done by him, ſo it is without authority; For the Sheriff hath no authority, at this day, to bayl any ſuch priſoner, except it be upon or by virtue of the Kings ſpecial Writ to him directed for that purpoſe. Fitz. fol. 250. 251. Regiſter 269. 270.

23. H. 6. c. 10. Fitz. 251. b. But Sheriffs, Underſheriffs, and other Officers ought to let to bail, and out of priſon, all manner of perſons being in their képing, or by any of them arreſted by force of any Writ, Bill, or Warrant, in any action perſonal, or upon any Indictment of treſpaſſe, upon offer of reaſonable ſuretie (of ſufficient perſons, having ſufficient within the County where ſuch perſons be ſo let to bail) to appear at the day and place, as the ſaid Writs, Bills, or Warrants ſhall require (or where the ſame are retornable) except ſuch perſons as are hereunder mentioned, ſcz. the perſons in the ſeven Caſes following. *Quenx perſons bailea-ble.*

Except all ſuch as are in their cuſtodie.

upon Capias
- 1. By Condemnation.
- 2. ad Satisfaciendum, or other Execution.
- 3. Utlagatum.
- 4. Excommunicatum.

Fitz. 251. b. Eyer. 119. Co. 10. 100.

5. For ſurety of the peace; and yet by the Common Law the Sheriff might have bailed ſuch before.
6. By commandment of any Juſtice. See Stamf. 73.
7. And vagabonds, or vagrant and idle perſons refuſing to ſerve, and which remain in priſon under the cuſtody of the Sheriff. Fitz. 251. b.

23. H. 6. c. 16. Plo. 63. The firſt branch of the ſtatute of 23. H. 6. is a precept and commandment to Sheriffs, that they ſhall let to bail priſoners which are arreſted in perſonal actions &c. the which Sheriffs could not do before this Statute. Co. 10. 100.

The ſecond branch of this ſtatute was to reſtrain the bailing of others contained in the exception; ſo that Sheriffs ſhall not bail any ſuch perſons as are in execution upon any ſtatute, or recogniſance, or upon any judgement given in any of the Kings Courts for any debt or damages at the ſute of any perſon, for that ſuch perſons ſhall not be bailed, nor ſuffered to go out of priſon by bailon, (ſcz. with a Keeper) until they have agreed with the parties of that whereof they were judged, or for which they are in execution (unleſſe it be by Writ, or other commandment of the King.) See the Statutes of Acton Burnell, & de Mercator made 13. E. 1. 1. R. 2. cap. 12. & Fitz. 121. a. & 251. d. Plo. 36. 37.

Mez ſi Home ſoit condempne in aſcun Court, & ſon corps priſe in Execution, icy ſon corps poet eſtre remove par bre de Corpus cum Cauſa, *ou par* Certiorari (*hors del Chancelry*); *mez il ne ſerra bayle, ſed ſerra remaunde al priſon, la de remayne, quoſque il ad ſatisfye le Plt. &c.* Statr. 2. H. 5. cap. 2.

Neither ſhall any Sheriff bayl any perſon, taken by a Capias Utlagatum, Excom Capiendo, for Suerty of the peace, by commandment of any Juſtice, Nor Vagrants. Ut ſupra Stat. 23. H. 6. cap. 10.

Neither ſhall Sheriffs bail any priſoner or perſon which is taken for any manner of treaſon or felonie. See the Statute of Weſtm 1. cap. 15. 27. E. 1. c. 3. 23. H. 6. cap. 10. & 1. R. 3. cap. 3. for that power is now taken away from the Sheriff, and transferred to the Juſtices of Peace, in caſes of Felony.

See more in my Country Justice tit. Bailement, what persons are bailable and what not.

If the Sheriff, Undersheriff, or other Officer shall detain any prisoner who is bailable as aforesaid, after sufficient sureties by the prisoner offered, or shall let to bail any person which is not bailable as aforesaid, such Sheriff or Officer shall lose to the party indamaged or grieved treble dammages, and besides shall forfeit forty pound to the King and Informer. 23. H. 6. cap. 10.

Officer prender sureties. Note, that the Bailiff or other Officer which arrests one by vertue of any Warrant, &c. ought to take sureties of the party arrested (if he be bailable) and this by force of this statute of 23. H. 6.

And therefore the prisoner is not bound to go to the Sheriff if he offereth sufficient sureties to the Bailiff.

The abuses of Sheriffs in bailing of prisoners, before this stat. of 23. H. 6. See in Plo. 67.

The third branch of the statute contains the form of the Obligation whereby they shall be let to bail; and makes Obligations taken in other form than the statute limits and appoints, to be void. Co. 10. 100.

Ferme del Obligation. Now for the form of such Obligations as the Sheriff, or his Officers shall take (for the appearance) of such as they shall let to bail, the words of the statute are thus; No Sheriff, nor any of * his Officers or Ministers, shall take, or cause to be taken, or made, any obligation for any cause aforesaid. Or * by colour of their Office, but only to themselves, of any person, nor by any person which shall be in their ward * (by course of the law) but by the name of their Office, and upon condition written, that the said prisoner shall appear at the day contained in the said Writ, Bill, or Warrant, and in such places as the said Writs, Bills, or Warrants shall require. Dyer. 119. Co. 10. 100. 23. H. 6. c. 10.

* Vide Dyer. 324. a. for this word, his.

* Nota ceux parols, & vide eux bien expound, Plo. 10. 68.

* Vide Plo. 69. a.

If the Sheriff, Undersheriff, Bailiff, or other person shall take any bond or obligation of any person being in their custody, in any other form, by colour of their Office, such obligation shall be void, and besides the Sheriff (or other Officer) taking such obligation contrary to this statute, shall lose to the party indamaged or grieved in this behalf his treble damages, and besides shall forfeit xl. l. to the King and Informer. Co. 10. 100. Plo. 68. Dyer. 119.

Now then seeing that Sheriffs, Undersheriffs, and other Officers, after they have arrested one that is baileable, they then are to bail, and ought to take bond for the appearance of their prisoners, before they deliver them, it behoveth them to be heedful and careful, that their bonds be made according to Law, wherein let them mark these observations. 23. H. 6. c. 10.

1. First, the bond must be made to the High Sheriff himself (or to his use) by the name of Sheriff, and not to the Undersheriff, nor to any other.

2. Next there must be nothing inserted or put into the condition of that bond, but only that the Defendant shall appear (in the Court, from whence the Writ issued, or in such place as the said Writ or Warrant shall require) at the day contained in the said Writ or Warrant (being the day of the return thereof), and there to do as the Writ requireth. Plo. 69.

And yet if the condition be to appear generally, or to appear and answer; or to appear in person, it is good enough, notwithstanding such addition. See postea.

3. And concerning the prisoner or party to be bailed, it is meet, and safest for the Sheriff, that he be bound with two sureties, having sufficient

ficient within the ſame county; but this not of neceſſity, but only for the ſafety of the Sheriff.

Cromp. 106. a. A bond entred into by a priſoner, to any perſon ſave only to the ſheriff, for the enlarging of the priſoner, is not good, but meerly void in law, by this ſtatute of 23. H. 6. 1. *Serra al vic tantum.*

Co. 10. 100. b. Plo. 68. And with this agrees the Book of 7. E. 4. 5. were one was in the cuſtodie of the ſheriff, by force of a Capias directed to him upon an indictment of treſpaſſe, and the partie maketh an obligation to another (by the denomination of the Sheriff) upon ſuch condition as the ſtatute preſcribeth, (for the ſurety or ſecurity of the Sheriff) and there it is holden that the obligation is void, for that the ſtatute preſcribes that the obligation ſhall be made to the ſheriff himſelf, and by the Name his Office, and this is part of the eſſential form of the ſtatute. Dyer. 119. Co. 10. 100.

Cromp. 206. a. 7. E. 4 fol. 5. Dyer 120. A Sheriff had one in execution for a great ſum, and after the ſheriff took an obligation (of the party which was in execution, and of divers others) in his ſons name to pay to him at a certain day, &c. and ſo let the priſoner go at large, this was holden to be an eſcape, and the bond clearly void; it was the Sheriff of Staffordſhire his caſe Ann. 31. Eliz. as Maſter Crompton reporteth.

Ibid. And ſo it is where a bond is given to the Sheriff by a ſtranger for the inlargement of a priſoner, the bond is void. *Fait per eſtr'.*

Co. 10. 100. Plo. 69. a. But note, that this ſtatute of 23. H. 6. extends only to ſuch obligations which any perſon being in the cuſtody (or ward) of the ſheriff, do make unto him, and therefore Anno 34. Eliz. in an action of debt brought by D. ſheriff of B. againſt Burman upon an obligation, the defendant pleaded this ſtatute of 23. H. 6. and ſhewed that one K. recovered debt and dammage againſt him, and purſued a writ of Fieri facias againſt him, directed to the Sheriff of B. and that he made the obligation to the plaintiff (being ſheriff) for the execution, and that the obligation was void by the Act; upon which the plaintiff demurred; and it was reſolved and adjudged, firſt, that the obligation was not within the ſaid ſtatute, for that the ſtatute extends onely to ſuch obligations which any being in his * cuſtody do make unto him. 2. That the obligation was not void by the Common Law, whereupon the plaintiff had judgement. *Sur fieri fac.*

* Mes icy le party ne fuit en ſon cuſtody car fuit, ſur *Fieri fac.*

Wherewith alſo agreeth the opinion in Dyer. fol. 119. a. that this ſtat. of 23. H. 6. doth make void onely obligations made (to the ſheriff, &c.) by priſoners, and perſons arreſted.

Co. 10. 99. b. And ſo in Beaufages caſe (1. Jacobi Regis) the ſheriff upon a Fieri facias, took bond of the defendant to pay the money in Court at the return of the writ, and it was reſolved that ſuch obligation was good, and not void by the ſtatute of 23. H 6.

Co. 10. 100. a. The like judgment was given an 28. & 29. El. between Burwey and Kett upon an obligation taken by the ſheriff, p ſolutione pecuniæ debitæ dominæ Reginæ, upon an extreat out of the Exchequer. *Sur eſtreate.*

Si le vic. levy biens ſur fieri fac. *& apres vend eux al party, & priſt obligation per les deniers, ceſt obligation neſt void* per Stat. 23. H. 6. p Curiam in Communi Banco. Mich. 37. Eliz.

Iſſint ſi vic. Attache bienz, & priſt obligation per eux. ibid.

Ri. Bowes *vic. del* Stafford *prot dett ſur obligation vers* Himingham, *Et il plede in barr le ſtat. de* 23. H. 6. *Et dit que un* Vernon *fuit in priſon al plt. &c.* Et ſic in Executione exiſtens *fait le dit obligation al plt.* pro deliberatione ſua: *le plt. replia, que* Vernon fuit alarge, abſque hoc quod fuit in Cuſtodia ſua tempore obligac. facte. *Et un Jury eerant al Barr*, Egerton *ſollicit. move le Court que l'iſſue fuit jeofayle, Car non obſtant*

que home ne ſoit in Execution al temps del obligation fait, uncar ſi le obligation fuit fait pur ſon deliverance, ceo eſt deins ceo ſtat. Et ſi ne ſoit accordt al ceo ſerra void; Come J. S. erant in Execution promiſe le vic. pur faire a luy un obligac. ſil voet luy diſcharge, Et le vic' luy leſſer d'aler alarge, & donq; il fut obligaco. &c. ceo eſt deins le ſtatt. car eſt fait pour ſon deliverance, & fuit le cauſe de ſon deliverance, Et ceo caſe fuit agree per Wray, Gawdy, & Fenner *Juſtic': Et ſic n'eſt iſſue, ſi fuit in priſon al temps del obligation fait, on nēy.*

Tanfeild *al contrary, le ſtatt. eſt*, That no ſheriff, &c. ſhall take any obligation for any cauſe aforeſaid, &c. of any perſon, nor by any perſon, which ſhall be in their ward, &c. *per queux parolx* conſtat *que le obligation priſt n'eſt deins le ſtat. ſinon que le perſon ſoit in gard*, Et ſic *le eſteant in priſon eſt Iſſuable*; Wray, Gawdy, Fenner & Clinch, *non obſtant que obligaco. priſe d'un que eſt alarge, ſoit deins le ſtat. per ſpecial matter mre, &c. uncar quant celuy que pledge le Stat. ſuppoſe que un in* Executione exiſtens *fait obligation, ore le erant in Execution al temps eſt neceſſary & traverſeable, Et Iſſue priſe ſur ceo eſt bon: per que le Jury fuit priſe, & troverent per* Ri. Bowes.

But if the Sheriff ſhall take an obligation of any perſon being in his cuſtody or ward, then the condition of ſuch obligation muſt be in ſubſtance according to the form preſcribed by the ſtatute or otherwiſe it will be void.

Sanz condic. And therefore in 37. H. 6. the Sheriff took a ſingle obligation of one that was in his cuſtody (who was baileable) and it was holden to be void, for that the obligation wanted the eſſential form preſcribed by the ſtatute; for the condition therein preſcribed (ſc. for the apparance of the priſoner) was wanting, which is part of the ſubſtance. Co. 10. 100. Plo. 76. Dyer. 119. 37. H. 6. f. 1.

De un que nē baliable. So in the ſame book Moyle ſaith, that if the Sheriff had bayled one who is excepted in the ſaid Statute, and not baileable, and had taken a ſingle obligation, that it was void, which the reſt of the Juſtices alſo granted; for by the exception it appeareth that it was not the intent of the ſtatute, that he ſhould be bailed, and ſo the obligation is taken in other form than the ſtatute meant. 37. H. 6. fol. 1. Plo. 64. 67.

De ſaver harmleſſe. And by the opinion of Sir Edw. Coke, that alwel in the former caſe of 37. H. 7. as in the principal caſe of Dive and Manningham, Plo. 67. the obligation which was with condition to ſave the Sheriff harmeleſſe (when the Sheriff againſt the law had bailed one which was not baileable) is againſt the law, and void by the common law; wherewith agreeth Wiſehams caſe, 15. El. Dyer. 324. Co. 1. 100. b. Plo. 69.

Addition. Alſo if the Sheriff ſhall adde to the condition of the obligation, that he ſhall be ſaved harmleſſe againſt the King, and the plaintiffe, &c. this ſhall make all the condition void. Plo. 62. Co. 10. 100. b.

So if the Condition of the bond be, to ſave harmleſſe, or to diſcharge the Obligée; Or to diſcharge, or to pay the charges or fées of the priſoner; Or to yield his body to priſon at all times upon ſummons, &c. in theſe caſes all is void. Dyer. 118. 119.

So if the condition of the bond be, that the priſoner ſhall be alwayes at the commandement of the ſheriff, as a true priſoner, &c. Or ſhall behave himſelfe as a true priſoner (aſwell within the Gaol, as without) until he ſhall be lawfully diſcharged. Dyer. 323. Plo. 62.

One being in the Marſhalley for debt, the priſoner and an eſtranger did enter bond to the under Marſhal, with condition to ſave him harmleſſe of all Eſcapes, Actions, and ſutes touching the priſoner, and thereupon he let the priſoner go at large, and the opinion of the Court was that the obligation was void; And alſo that the under Marſhall was within

within the Caſe of the Statute of 23. H. 6. cap. 10.

Et nota *que coment touz les printed Statuts de* 23. H. 6. *ſont, que nul Viscount, ne nul de ſes Officers ou Miniſters ſuſdit, prender aſcun obligation, &c. uncar les parolz del Eſtat. Eſcript, ſont que nul vic. ne nul del Officers ou Miniſters, & nēy ſes Officers.* Dyer. 324.

Ibid. So if the Sheriff or gaoler ſhall take an obligation of the priſoner, with condition to pay for his meat, or his drink, theſe are void. Plowden. 68. See hic Gaoler.

Co. 10. 100. b. So if the Sheriff ſhall add any other thing to the matter preſcribed by the ſtatute, as to pay ſo much money for a horſe, &c. ſuch addition maketh all the obligation to be void, for that it is taken in other form (touching the ſubſtance of the matter) than is preſcribed by the ſtatute; and with all this agreeth matter Plo. fo. 67. 68. 69.

Co. 10. 100. b. And if a Sheriff or gaoler (for the eaſe and enlargement of any perſon who is in their cuſtody, or ward) ſhall take a promiſe to ſave him harmleſſe, although the ſtatute ſpeaketh onely of obligations with conditions, yet this is in the like miſchief; and therefore promiſes ſhall be taken within the ſtatute of 23. H. 6. and within the equity of the words (any obligation) an aſſumpſit ſhall be taken; for Quando verba ſtatuti ſunt ſpecialia, ratio autem generalis, generaliter ſtatutum eſt intelligendum. See hic poſtea Dabridgcourts caſe. *A verbal promiſe.*

Dabridgcourt brought an action upon the caſe againſt Smalebrooke, and counted that whereas the plt. was ſheriff of the county of Warwick and a Capias ad ſatisfact. came to him to take one Lane at the ſute of the deff. the deff. deſired the ſaid ſheriff to make one Ruſſell (who was the deff. friend) his eſpecial bailiff for the taking of Lane, and in conſideration thereof, the deff. did aſſume and promiſe that if the ſaid Lane did eſcape, that he would not take any advantage thereof againſt the plt; whereupon the Sheriff made the ſaid Ruſſell his ſpecial bailiff, &c. and after the ſaid Lane did eſcape, and for this the deff. charged the plt againſt his own promiſe and Aſſumpſit, whereupon he brought his action: The deff. pleaded Non Aſſumpſit, and it was found for the plt; And in arreſt of Judgment it was alleged that this Aſſumpſit is within the ſtat. of 23. H. 6. in the ſame manner as an obligation is; and ſo void; Alſo that the Aſſumpſit was againſt law, for the ground of it was to let Lane at large, which the Sheriff could not do. And in this Caſe Cooke agreed that an Obligation, and Aſſumption alſo, is void by the ſtat. of 23. H. 6. where the party is arreſted, but here this Aſſumpſit is before the party was arreſted, and the Aſſumpſit was not made by the party himſelf. Wray Chief Juſtice ſaid, that an Aſſumpſit was within the ſtat. of 23. H. 6. alwel as an Obligation, but here this Aſſumpſit was not within the ſtatt nor contrary to Law, For if the ſheriff ſhall make a Bailiff at the requeſt of the party, reaſon will that the ſame party ſhall not charge the ſheriff for en eſcape ſuffered by the ſaid Bailiff. Gawdy Juſtice was of the ſame mind, for that it was a benefit to the party. Clinch and Fenner alſo agreed thereto. And Fenner (who was made Juſtice the ſame term) ſaid, that the Sheriff did take of every known bailiff an obligation to ſave him harmleſſe, wherefore it is great reaſon when he makes a ſpecial bailiff at the requeſt of the party himſelf, that the party ſhall not take advantage of this eſcape. And Judgment was given accordingly for the plt. in Banco Regis ter Hillar. 32. Eliz. Rotul. 371.

Alſo Fenner (in the former caſe) ſaid, that if ſuch an Aſſumption had been made to the Sheriff, to have one Bailiff who is a Bailiff Generall to the Sheriff, it had been void, for it had been no benefit to the party; but otherwiſe to have a ſpecial Bailiff (as in this

this former case) for this doth advantage the party to have a more speedy Arrest made.

Also in the former Case it was said to have been adjudged, that where an Obligation is void by the stat. of 23. H. 6. that in every such case, an Assumption or promise shall also be void. And Wray said further, that if the stat. makes an Obligation void, a fortiore it makes an Assumpsit void, which shall be contrary to the provisions of the said statt. But the Assumpsit in the first case he, and all the other Justices held to be good.

By Montague chief Justice, if more be inserted into the Obligation than for appearance of the party bound, all the Bond is void. Plo 68.

And yet 21. Eliz. Dyer 364. there the condition was in the copulative, to appear and answer, and the Obligation holden good. Co. 10. 101. b. Dyer. 364.

The case there was this, a Sheriff having an attachment returneable coram domina regina & concilio suo, in camera stellata apud Westmonasterium in quindena Paschæ, ad respond dictæ reginæ & concilio suo de quodam contemptu, & ad faciend & recipiend ulterius, &c. doth arrest the party, and takes bond of him (for his appearance) indorced with this condition, scz. that if he shall personally appear before the Queens majesty and her Council at Westminster, in quindeñ Paschæ, and then and there shall answer a contempt by him against the Quèn and her Council committed, that then, &c. And the question was, whether this bond and condition were good in Law or no, because the words (and then and there shall answer, &c.) were added to the condition, and so was more than the statute of 23. H. 6. would warrant; And by the opinion of Dyer and Wyndham the obligation was good enough, for it was as much as to have said, then and there to answer (to a contempt, &c.) which had been good: And by this obligation no profit did accrue or grow to the Sheriff, nor to any other person, but was only to answer the Quèn, &c. which was the intent of the statute of 23. H. 6. yet Meade was of the contrary opinion: But after judgement was given for the Plaintiff, and so the obligation holden and adjudged to be good, according to the statute of 23. H. 6.

Also in the Kings Bench anno 27. Eli. the case was this, Sir William Drurie late Sheriff of the County of Suff. brought an Action of Debt upon an obligation of twenty pound, against A. B. who demanded oyer of the obligation (whereby it appeared that the Defendant was only bound therein) and of the condition, which was that one More, whom the said Sheriff had arrested by force of a Latitat out of the Kings Bench, should appear in person at the day contained in the Writ, ad respond', &c. and pleaded the stat. of 23. H. 6. and that the said obligation was taken in other form than the said statute prescribed, &c. whereupon the Plaintiff demurred in Law: And it was objected that there were three variances from the form prescribed by the Statute, scz. one in the obligation, and two in the condition: In the obligation, for that the Plaintiff took but one suretie, whereas the Statute prescribes reasonable surete of sufficient persons, in the plural number, having sufficient within the County, &c. in which case there ought to be two sureties at the least; and here was but one surety, and so against the words of the said Statute; and also against the intent of the Statute, for the more, and the more able that the sureties are, they will the sooner cause the party that is bailed to appear, and thereby Justice shall proceed with more expedition: And also in the condition, first the words are that the prisoner shall appear in person, whereas the words of the statute are to appear generally, without these words in person; secondly, that he should appear at the day, &c. and respond, where those words 27. Eliz.

(ad

(ad reſpondend') are more than the ſtatute preſcribes, and ſo for theſe two cauſes the condition varied from the form preſcribed by the ſtatute, and therefore the obligation was void: But it was reſolved by Sir Chriſtopher Wray, Sir Thomas Gawdie, and all the Court of the Kings Bench, that the ſaid obligation was not void; for as to the firſt objection, the words upon reaſonable ſuretie of ſufficient perſons, are added for the ſurety of the Sheriff, and therefore if he will take but one ſurety, it is at his peril, for he ſhall be amerced if the Defendant appeareth not; and therefore the ſtatute doth not make void the obligation in ſuch caſe, for the branch of the ſtatute which preſcribeth the form of the obligation, requireth that the obligation ſhall be made to the Sheriff himſelf by the name of his Office, and that the priſoners appear, in which clauſe no mention is made of the ſureties, ſo that the meaning of the ſtatute was, that in as much as this was at the peril of the Sheriff, to leave this to his diſcretion, ſcz. to take one or moe ſureties for his indemnity; and peradventure it ſhall be better for him ſometimes to take one which is ſufficient, than two others; And although the ſureties or ſuretie have not ſufficient within the ſame County, as the ſtatute mentioneth, yet the obligation is good enough, for theſe words of the ſtatute to this point, are rather for counſel and direction of the Sheriff, than by way of precept or conſtraint to him, and that for the ſafety of the Sheriff: But note, that if the Defendant cannot find two ſufficient ſureties, having ſufficient within the ſame Countie, the Sheriff is not bound to let him to bail.

But one ſurety.

Nient ſuffic' deines county.

Co. 10. 100 a.

Ibidem.

And as concerning the two additions to the condition of the ſaid obligation, more than is in the ſtatute, it was reſolved, that there is a verbal difference in the form preſcribed by the ſtatute, but no difference in ſubſtance and effect, for he that is bailed ought to appear in perſon; And ſo, and for the ſame cauſe, the other exception was not material, for he which was to appear, ought to appear ad reſpondend', & parum differunt, que re concordant.

Fitz. 25. c.

In an action of Debt brought by Baſſett (a Sheriff, in Communi Banco Anno 29. Eliz. Rotul' 1511.) againſt Ballard, upon an obligation made upon condition that Ballard ſhould perſonally appear (before the Juſtices of the Common Place) at ſuch a day, there to anſwer to ſuch a ſute as I.S. had againſt him; it was moved that this bond taken by the Sheriff was againſt the form of the ſtatt. of 23. H. 6. for that there was more inſerted into the Condition, than the ſtatt. lymits, or the Common Law enforced, for it had this word perſonally, whereas the Deff. may well appear by Attorny, in the action, &c. and therefore the bond ſhould be void by this ſtatt. And it was adjorned, and after Gawdy ſhewed a Judgment in the Kings Bench, upon the very point, upon a bond taken by Thomas Sakford (a Sheriff) of one Shute (A. 29. Eliz. Rotul. 1512.) And Sackford brought an action of Debt againſt Shute hereupon; and it was adjudged for the Plt. after much argument. *Quære ſi nul diverſity ſoit parenter apparant ſur Latitat, & ſur anter bre, Car ſur Latitat ne poet appeare per Attorny, ſinon le plt. voet ceo admit; mes ſemble nul diverſity, Car le Stat. ne parle ſic, perſonally.*

And ſo note that Sheriffs (nor their Officers) ought to take no obligation for any cauſe or thing aforeſaid (or by colour of their Office) of any perſon being in their cuſtodie or ward, but only to the High Sheriffs themſelves, and by the name of their Office, naming himſelf Sheriff in the obligation, and upon condition only that the party ſhall appear at the day and place in the Writ or Warrant ſpecified; and if any obligation be taken by colour of their Office, in any other form,

it

it is void by the Statute of 23. H. 6. But for the ſureties, their number, their ſufficiency, and the ſum wherein they ſhall be bound, all theſe reſt in the diſcretion of the Sheriff, and his Officers, but yet at the peril of the Sheriff, if the Defendant ſhall not appear thereupon.

Regula. *Comen obligation priſe in auter manner que le ſtatute* (de 23. H. 6.) *preſcribe ſoit void, uncore le partie ne poit plede* non eſt factum, *mes avoidar' ceo per plee*, &c. 7. E. 4. fo. 5. Co. 3. 59. & 5. 119.

Ceo Statute de 23. H. 6. cap. 10. *eſt forſque particuler & ſpeciall act, dont les Juges, ou Court, neſt tenu de prender notice, ex officio, ſinon que ſoit plead per le partie.* Dyer 119. Co. 4. 76.

In dette ſur obligation priſe per vic. pur apparance tiel jour, Le Deff. dit que il appeare, &c. le Plt. replye que ne appeare, &c. Ceo ſerra trye per le Record, & nëy per payes; Car neſt apparance ſinon ſoit per matter de Record. M. 29. Eliz. in Banco Rs.

Tiel bonds deient eſtre ſue per vic. per noſme del vic. en auterwt le briſ abater. M. 29. Eliz.

Si vic. priſt obligacion pur apparance, & le obligor ne appeare, uncar ſi le vic. ne ſoit amerced pur ceo que l'obligor ne appeare le vic. ne poit ſuer ceſt obligation. p Cur. Minch. 38. & 39. Eliz.

Nota, que le vicount & ces officers, ne poient prender obligation de lour priſoner, forſque in petit number de Caſes, car lour abilitie in ceo point eſt ſtreit per ceo ſtatute de 23. H. 6. Plo. 61. a.

Et iſſint ſemble de obligations priſe per le vicont de ſes officers, ou de aſcun auter perſons, colore officii, *ſi iſſint ſoit que le obligation eſt priſe in auter forme que le ſtatut. limit*: tamen quære.

A priſoner that is ſent to the Gaol for Felony, or ſuſpition thereof, may in divers caſes be bayled by the Sheriff; But that muſt be upon the Kings writ ſpecially directed to the Sheriff for that purpoſe. Vide Fitz. 250. & 251. a.

A man indited of treſpaſs (or for any other like offence) before Juſtices of Peace, and thereupon committed to priſon, may alſo upon the Kings writ be bayled by the Sheriff, to appear at the Seſſions, &c. Fitz. 250. g. h.

If a man be ſued or indicted, &c. whereupon a Capias, or an Exigent ſhall be awarded againſt him, and the party thereupon is arreſted, or impriſoned, &c. yet upon a Superſedeas directed to the Sheriff, he is to bail the party, &c. Fitz. 236. 237.

If a man be bound in a ſtatt. Merchant payable at a certain day, and at the day he payeth part of the ſum, and gets a Releaſe (from the Conuzee) for the reſidue, and yet after the Conuzee ſueth Execution, and taketh the body of the Conuzor, &c. here upon a writ directed to the Sheriff (rehearſing the matter, &c.) the Sheriff may ſafely bail him. Fitz. 251. d.

And ſo in divers other caſes, upon the Kings writ directed to the Sheriff to bail or deliver a priſoner, &c. the Sheriff ought to do as he is commanded by the writ.

CAP.

CAP. 97.

Obligacions.

The form of a Bond for appearance.

NOverint univerſi per præſentes nos *A. B.* de C. in com̃ Cantebr̃ geñ, *E. F.* de L. in comit' præd' yeoman, & *H. T.* de R. in com̃ prædict. yeoman, teneri et firmiter obligari *A. B.* milit' vic' com̃ præd. in quadraginta libris bonæ & legalis monetæ Angliæ, ſolvend' eidem vicecomiti aut ſuo certo atturnato, execut', ſive adminiſtratorꝝ ſuis, Ad quam quidem ſolutionem bene & fideliter faciend', obligamus nos & quemlibet noſtrum per ſe pro toto & in ſolido, hæred', executorꝝ, & adminiſtratorꝝ noſtros, & cujuſlibet noſtrum, firmiter per preſentes. ſigillis noſtris ſigillat', dat' quarto die Decembris, anno regni domini noſtri *Jacobi* Dei gratia regis Angl', &c. decimo nono, & Scotiæ quinquageſimo quinto annoque Domini 1621.

The Condition for appearance.

THe condition of this preſent Obligation is ſuch, That if the above bounden A. B. do appear coram domino rege (if the writ be out of the Kings Bench) apud Weſtmonaſt. die Jovis proxim' poſt quindena ſancti Hillar̃ (or otherwiſe according to the return of the writ) but if the writ be returnable in the Court of Common Pleas, then the words in the condition muſt be for the Defendant to appear coram Juſtic' domini regis (apud Weſtmonaſt. in oct. ſancti Hillar̃, (or ſuch other return according to the writ) to anſwer to C. D. in a Plea of Treſpaſſe (or debt, as it is in the writ) that then this preſent Obligation to be void and of none effect, or elſe the ſame to ſtand, remain, and continue in force, ſtrength, and vertue.

Sealed and delivered to the uſe of the abovenamed Sheriff, in the preſence of *A. R.* and *T. S.* (two witneſſes at the leaſt.)

Or thus in Latin.

COnditio iſtius Obligationis talis eſt, Quod ſi interius obligatus I. H. Compareat perſonaliter coram dño Rege: Or coram Juſtic' dñi Regis, apud Weſtm̃ (à die paſchæ in xv. dies) ad reſpondendum A. B. de placito debiti vel detenc', aut compoti, juxta tenorem brevis dñi Regis præfat' vic' inde direct'.) Quod tunc præſens Obligatio vacua & pro nulla habeatur, Alioquin in ſuo robore permanere & effectu.

Upon a Warrant made or granted out upon a Capias utlagatum, the Sheriffs in ſome places do uſe to take of their Bailiffs a Bond, with Condition, to bring the Defendant to priſon if he be arreſted; which makes good execution of thoſe Proces. And it were to be wiſhed, that this were uſed in all Countries, and then there would not be ſo much Extortion and indirect dealing uſed by Underſheriffs and Bailiffs to the

King and his subjects as there is: For if they take any man upon a Capias utlagarum, they will not only take money of the Plaintiff, for to take the Defendant, but when they have taken him, for money they will let him go again; and they will allege for a colour, that it is to reverse the Outlawry, which they have nothing to do withall; for the Defendant ought to be brought to prison, and there to remain until he hath reversed the Outlawry by the help of some Atturney, and not by the Sheriffs, Undersheriffs, or other Officers. For no Undersheriff, or Sheriffs Bailiff, &c. ought for their times to practice as an Atturney. Wilk. See hic postea titulo Sheriffs Officers.

Upon Replevin. Also upon all Replevins granted or made by the Sheriff, or his Officers, they must take a Bond of him to whom the Replevin is granted, for his appearance, and prosecuting of the sute, &c. Whereof see postea titulo Country Court. Westm. 2. c. 2.

De prosecutor le sute.

De Retur' les biens, si, &c. Also there is another Bond which the Sheriff or his Officers must take for the delivery of the goods or cattel replevied, if return shall be adjudged, &c. The form of which condition may be as followeth. Ibidem.

Conditio istius Obligationis est talis, quod si supra Obligati A. B. & C. D. redeliberaverint supra nominato vicecomiti: omnia illa bona & catalla, & quamlibet inde parcellam per P. H. capt' & ratione cujusdam Repleg' per prædictum vicecomitem factum, præfatis A. B. & C. D. Repleg', si returna inde adjudicetur; Et præd' vic' & executor' suos indempnem conservaverint, Quod tunc hæc præsens Obligatio vacua & pro nulla habeatur, Alioquin hæc præsens Obligatio in omni suo robor' permanere & effectu.

Or thus in English, as well for the prosecuting of the sute, as for the Return of the goods.

Alitter. The condition, &c. That whereas the within-named Sheriff by virtue of his Office, and upon the complaint of the within-bounden I. S. hath delivered and Replevied to the same I. two Horses and five Kine, which one W. T. late took and wrongfully withholdeth, as the said I. S. saith: If the said I. do pursue his action with effect against the said W. for the taking and withholding of the said Horses and Kine, and do make return of the same, if the return thereof shall be so adjudged by Law; And the said Sheriff his heirs, executors and administrators shall acquit, discharge and save harmless against our sovereign Lord the King, and the said W. of and for all and every thing concerning the premises, That then, &c. Westm 2 11.

A Condition to appear before the King and his Council, in the Starr Chamber.

The condition, &c. That if the within-bounden I. S. do personally appear before the King and his most Honourable Council in the Court of Starr-Chamber at Westminster (upon such a day) and so from day to day, and not to depart without Licence of the said Court, That then, &c.

A Con-

A condition to appear in the Common Place, upon an exigent.

Conditio, &c. Quod ſi A. B. de, &c. in propria ꝑſona ſua compuit coram Juſtic. dñi Regis apud Weſtm. a die Sancti Michis in tres ſeptimanas ꝓxim̃ futur̃ poſt datum infraſcript. Ad reſpondend̃ R. W. in plito debiti, ſecundum vim formam & effectum cujuſdam bris de Exigend̃ infranom̃ vic. direct. Quod tunc, &c.

A Condition to appear at the Seſſions of the Peace.

Conditio, &c. Quod ſi infra Obligatus J.S. in ꝓpria ꝑſona ſua compareat (quære *de ceo clauſe*, & reddit ſe tanquam priſonar̃ vic. infranom̃) ad ꝓxim̃ Seſſioñ Juſtic. Pacis in Com̃ Cantabr. ꝓxime poſt feſtum, &c. ꝓxim̃ futur̃ tenend̃ Ad reſpond̃ dño Regi de diverſis offenſis unde indictatus eſt. Quod tunc, &c.

Alias. Conditio, &c. Quod ſi quædam A. W. ſpinſter, in propria perſona ſua compareat coram Juſtic. dñi Regis de Pace in Com̃ C. conſervand aſſignat. ad ꝓximam Seſſionem Pacis dicti dñi Regis apud C (*en le Shirehowſe* ibm) ꝓxim̃ tenend̃ Ad reſpond̃ tam dicto dño Regi, quam G. S. de plito tranſgreſſ. & contempt. contra formam Statuti ſervient. * Et ulterius indempnes conſervet infranominat. vic. hæredes & executores ſuos, verſus dictum dominum Regem, & omnes alios quoſcumque, de & ſup̃ præmiſſis, quod tunc, &c. Weſt. 260. *Mz quære de cel darein clauſe on addition, ad not.* *

A Condition to be true priſoner.

The Condition, &c. That if I.H. Merchant of, &c. which now is in the Kings ꝓiſon under the keeping of the Sheriff within named, as well by reaſon of a writ of our ſoveraign lord the King of the ſtatute of the ſtaple conteining the ſum of one hundred pounds, &c. As alſo for certain other actions, cauſes, and ſutes on the behalf of R. S., &c. moved and commenced, be from henceforth a true and faithful priſoner, tarrying and remaining with the ſaid ſheriff and his deputy, till the ſame R. S. be fully at an end diſcharged and acquitted of the ſaid action, and then content and pay to the ſaid ſheriff, &c. All and ſingular coſts, charges, fees and other duties, in ſuch caſes therefore accuſtomed to be paid. That then, &c. Weſt 210.

A Condition for appearance in the Kings Bench, for the Peace.

Weſt. 270. Conditio, &c. quod ſi infra Obligatus I. L. compareat perſonaliter, in cuſtod infranominat' vicecom', &c. coram domino Rege (in octabis ſancti Michaelis proxim' futur') ubicumque tunc fuerit in Anglia, ad inveniend' tunc coram ipſo domino Rege ſufficientem ſecuritatem pacis dñi Regis, & de ſe bene gerendo erga ipſum dominum Regem & cunctum populum ſuum, & præcipue erga H. C. juxta tenorem brevis ipſius domini Regis præfat' vicecom̃ inde direct'; Et medio tempore pacem gerat, & dict' vicec' hæred' & executor̃ ſuos erga dominum Regem & cunctum populum ſuum, ꝓræcipue erga prædict' H. C. de & in omnibus concernent' præmiſſa indempnes conſervet quod tunc, &c.

A Condition for appearance in the Kings Bench, and good abearing.

West. 201. Conditio iſtius Obligationis talis eſt, quod ſi interius Obligatus I. L. compareat perſonaliter ſub cuſtodia infranominati vicecom̃ vel ejus deputat' coram domino Rege in Octabis ſanct' Hillar̃ proxim' futur̃ ubicunque tunc fuerit in Anglia, ad inveniendum tunc coram ipſo domino Rege ſufficientem ſecuritatem de ſe bene gerendo erga ipſum dñm Regem & cunctum populum ſuum, juxta tenorem brevis dicti domini Regis præfat' vicecom̃ inde direct', & ſe bene medio tempore gerat, & dict' vicecom̃ & executor̃ ſuos erga dominum Regem & cunctum populum ſuum, de & in omnibus concernent' præmiſſa indempnem conſervet, quod tunc, &c.

De ſes officers.

Alſo it is ſafe for the Sheriff to take good ſecurity of his officers ſcz. from his undersheriff, bailiffs and gaoler, &c. And this ſecurity is commonly by bonds or covenants, the forms whereof, See hic poſtea titulo, Sheriffs Officers.

But theſe bonds are thought by ſome opinions to be void, or voidable by the Words of the ſtatute of 23. H. 6. cap. 10. That no Sheriff ſhall take any Obligation for any cauſe aforeſaid, Or by colour of his office, but onely in ſuch form and ſort as is preſcribed by the ſame ſtatute, And if any Sheriff take any obligation in other form, by colour of their office, it ſhall be void: And therefore if the High Sheriff ſhall take good Covenants by Indenture, from his Undersheriff, Bailiffs and Gaoler, &c. with 3. or 4. good ſuerties, (all of them to Covenant joyntly and ſeverally to and with the High Sheriff for the performance of ſuch Covenants as ſhall be meet to be had and made betwẽn the ſaid High Sheriff, and his ſaid Officers, reſpectively) it may ſeem (without bonds) to be ſafer, than to truſt wholy upon bonds which may be queſtioned, &c. And yet a bond of ſome good ſum with ſuerties, from the Undersheriff and other Officers, with condition for the performance of the Covenant compriſed in ſuch Indentures, will make them the more careful, &c.

And by others this ſtat. of 23. H. 6. doth make void onely ſuch obligations as are made (to the Sheriff, &c.) by Priſoners, or perſons arreſted. See hic cap. 69. And that bonds taken by the Sheriff, or his undersheriff, Bailiffs, and other Officers, with condition to ſave the High Sheriff harmleſſe, are good.

Alſo by the ſtatute made 37. E. 3. cap. 2. where the Sheriff ſhall ſeiſe any lands or goods, &c. of one mans, which beareth the ſame name with another that is utlawed, the party grieved may have a Writ de Idemptitate Nominis, directed to the Sheriff (or other officer:) but the party grieved muſt withall find ſurety before the Sheriff (or other officer) to anſwer the King the value, &c. in caſe he cannot diſcharge himſelf.

Sur Idempt. Nominis.

CAP.

CAP. 98.

The Sheriff is to be Attendant upon the Judges in their Circuit.

NOte that the Counties of this Realm are divided into 6. Circuits. And two learned men are assigned by the Kings Commission to every Circuit to ride twice a year through those Shires allotted to that Circuit.

And the Judges of Assise allotted to every Circuit do use to make Proclamation aforehand a convenient time in every County of their comming into the County, and the time, and place of their sitting.

And at that time, all the Causes of the Country are brought before them by the parties grieved: And all the Prisoners in the Gaoles of those Shires; And all controversies arising concerning life, liberty, lands, or goods.

And these Judges of Circuits have now five Commissions, by which they sit.

1. A Commission of Oyer and Terminer directed to them and to many other of the best accompt in the Circuit: But here the Judges are of the Quorum. And this is the largest Commission, giving them power to deal with Treasons, Murthers, and all manner of felonies and mildemeanors.
2. A Commission of Gaol delivery: This is to the Judges onely; And hereby they are to deal with every Prisoner in the Gaoles, for all Offences whatsoever.
3. A Commission to take Assises. } These two Commissions are
4. A Commission to take Nisi prius. } directed only to the Judges, for the speedy trial of discords: and also to try Issues joyned at Westm. for the ease of the Country.
5. A Commission of the Peace, in every County in their Circuit: where all the Justices of the P. are to attend the Judges.

1 Upon a precept from the Judges of Assise, the Sheriff is to summon the Assises, and to return the same, &c. which see hic antea fol.

2 Also the High Sheriffs themselves of every shire are in person to attend upon the Justices or Judges of the Assise and Gaol delivery in (and through) their circuits, v. 27. and shall give their attendance for the due executing of the commandements and precepts of the said Judges in matters concerning the execution of their offices and ministration of Justice; and to take the charge of all prisoners committed to the prison, and for the execution of felons and other persons condemned to die, which Sentence he is to see Executed, And for the inflicting of punishment upon other prisoners according to Justice and the Judgement given upon them, and so far forth as apperteineth unto their office of a Sheriff.

Also all Stewards, Bailiffs, and other ministers of any Liberties, or Franchises, &c. shall be attendant to the Justices of Assise, and Justices of Gaol delivery, of the same shires, wherein such Liberties and Franchises be. And shall make due execution of all Proces to them to be directed for the ministration of Justice, within such Liberties and Franchises, 27. H. 8. cap. 24. vide hic cap. 121.

And the Judges of Assise may fine the High Sheriff, and other the said Officers, if they fail either in their attendance, or for any other negligence,

negligence, misbehaviour, or mildemeanour, in their Office, before them.

Yea, by some opinions, the sheriff in every shire through the circuit, is to attend in person, or by a sufficient Deputy allowed by the Judges, all the time that they be within the County, and the Judges may fine him if he fail, &c. Bacon. v. 26. Tamen aliter in usu.

The sheriff also is safely to carry, convey and conduct unto every such place and places as shall be lawfully assigned, all prisoners committed to his charge, or custody, or to his Gaoler, for any manner of mildemeanour, criminal cause, or other offence whatsoever, there to receive their trial, judgments, and punishments for the same.

The command of the Judge (without writ, or warrant) is a sufficient warrant to do execution upon a prisoner condemned. Fi. 17. 3. H. 7. c. 3.

3. Every Sheriff (and all other persons) which have the custody of the Gaoles (or of prisoners for felony,) ought to certifie the names of every of their prisoners which are in their custody for felony, to the Justices of the next general Gaole delivery, in a Kalendar, upon pain of v.l. for every default.

The form of such Kalendar may amongst other things be as hereunder followeth, or else they may make a Kalender of the prisoners alone.

Kalendarium.

Cantabr. KAlendarium de nominibus Justic' Pacis Domini Regis, Coronator' Seneſcall' Ballivor' libertat' & hundred', in com̃ prædict. Summon̄ ad eſſend ad Aſſiſas tenend apud C. in Com̃ prædict. die Lunæ in ſecunda ſeptimana Quadrageſimæ, Anno regni domini noſtri *Fa.* dei grac', &c. fidei defenſoris, &c. Ac de * nominibus priſon̄ in Gaola prædict. exiſten̄.

* See hic Titulo Gaol.

Nomina Juſtic' Pacis.

A. B. miles & Baronettus. C. D. miles. E. F. Ar. &c.

Nomina Coronatorum.

G. H. I. K. &c.

Nomina Seneſch. & Ballivor' Libert'.

L. M. N. O. P. Q. &c.

Or here you may ſhew ſpecially, who is Steward, or Bailiff, of every Liberty or Franchiſe, as followeth:

A. B. Seneſch. de Libertate de E.

C. D. Ballivus de libertat. de F.

Et ſic de cæteris.

Nomina ballivor' Hundred.

R. S. T. V. A. C. B. D. &c.

Or thus:

R. S. Ballivus Hundred de R.

T. V. Ballivus Hundred de C.

Et ſic de aliis Ballivis aliorum Hundred.

I. S. repriſ.

I. N. capt' apud S. pro ſuſpect' feloniæ.

Et ſic de reliquis, &c.

Alſo they muſt ſhew by what Juſtice of Peace the Priſoner was committed, and for what cauſe.

And they muſt here ſhew, what priſoners have bẽn bailed (by the Juſtice of Peace) after they were committed; And by what Juſtices they were bailed.

Nota,

Nota, *que Justices de Gaole delivery, (coment que lour Commission finys ove lour Sessions in mesme le pais, uncar) apres que sont ales, ilz poet commander le vic. de faire execution, d'ascun que est reprie, ou de staier ascun que ad judgment.* Dyer. 205.

Mes si le vic. stay de faire execution sur ascun prisoner que ad judgment, sanz commandement des Justices de Goala delivery, il ferra fine.

The Kings writ under the hand of the Justice of Gaol delivery, if it shall be sent to the sheriff commanding him to take persons appealed (before the same Justice) by Provors who are in prison, the sheriff in whose liberty the party so appealed shall be commorant or may be found, by vertue of such writ shall take such persons appealed, and shall cause them to be brought unto the Gaoles where the Appellors be kept that appealed them, &c. Stat. 28. E. 1. for persons appealed.

Ibid. Also by writ from the same Justices to the sheriff in whose liberty the felonies were done, of which such persons are appealed, the sheriff shall cause an Enquest of the Country to come before the same Justices, unto the same places where the Appellors be kept.

Ibid. And the sheriff in whose keeping such Appellors are deteined, shall receive those that be appealed by such Provors, when the parties appealed be taken, and brought unto the same Appellors.

The Justices assigned to hear and determine felonies (of the County where a man is indicted of felony) may award their proces or writ to the Sheriff of any other County, where the prisoner who is indicted is dwelling or abiding, to apprehend them, and the sheriff of such other County is to execute the same according to the writ. Stat. 5. E. 3. c. 11. & 8. H. 6. c. 10.

CAP. 99.

The Sheriff also is to assist the Justices of Peace in his County, in diverse cases.

The sheriff is to provide and make ready a fit, meet, and decent place, for the Justices of Peace, to keep and hold their general Quarter Sessions, as need shall require. *Riots.*

In some cases the Sheriff is to joyn with the Just. of Peace, as in case of riots. See hic antea.

If the sheriff, or undersheriff, shall not go and joyn with the Justices of Peace for the due execution of the Stat. of 13. H. 4. c. 7. made for the suppressing of riots, routs, and unlawful assemblies, &c. for the arresting, and imprisoning of such offendors, and recording their offence, and inquiry thereof, according to the same Statute, they shall forfeit one hundred pound.

13. H. 4. c. 7. 15. R. 2. c. 2. And the sheriff is to convey such offendors to the Gaol, at the appointment of the Justices of Peace.

If the truth of the riot cannot be found out upon the Inquiry, then within one moneth after the Inquiry, the Sheriff, or Undersheriff shall joyn with the Justice of Peace in a certificat of the fact and circumstances, &c. upon pain of one hundred pound. See hic antea fol.

Also if the said riot be not found by reason of any embracery, or maintenance, &c. Then the Sheriff, or Undersheriff (over and besides their former certificat) shall joyn in another certificat, of the names of such mainteinors, and imbracers, with their mildemeanors, upon pain of twenty pound. See hic antea fol.

In

In ſome cales the Sheriff is to attend the Juſtices of Peace.

If the Sheriff (or any other perſon of the County) do not attend upon the Juſtice or Juſtices of Peace, to go and aſſiſt him or them, to arreſt ſuch as ſhall make any forcible entries (into any houſes, lands, or other poſſeſſions) or any forcible detainer thereof, he or they ſo offending, ſhall be impriſoned, and pay a fine to the King. 15. R. 2. cap. 2.

Forcible entrie.

13. H. 4. c 7. P. force 5.

If two Juſtices of Peace (the one being of the Quorum) ſhall make their precept to the Sheriff to ſummon the Seſſions at a certain day and place, and ſhall command him thereby to return a Pannel or Jury from ſuch a Venue (or place near where their Seſſions ſhall be holden) before them, The Sheriff ought to perform this precept and commandment of the ſaid Juſtices, notwithſtanding any Superſedeas or other command or precept to the Sheriff awarded by any other Juſtices of Peace. Fitz. Juſt. of P. 10. Cromp. 122.

But if the King by his Writ of Superſedeas, ſhall command the Sheriff (or the Juſtices) that they ſhall not hold ſuch their Seſſions at that day and place appointed, this doth diſcharge the firſt precept of the Juſtices. ibm.

And yet if the Cuſtos Rotulorum, (or two Juſtices of Peace, &c.) ſhall make their precept to the Sheriff to ſummon the Seſſions at a certain place and day, Two other Juſtices (one being of the Quorum) may make another precept to the ſame Sheriff to ſummon and keep another Seſſions upon the ſame day, at another place within the ſame County, as Mr. Cromp. ſaith. fol. 123. 124.

THe Sheriff, (by himſelf or by his Underſheriff) ought alſo to attend the Juſtices of Peace at their general Seſſions of the Peace, and that for the double duty that he beareth, The one as Sheriff, to return the precept, and to take the charge of priſoners, and to ſerve the Court otherwiſe as he hath in charge by the Mandamus that is mentioned in the Commiſſion of the Peace; The other, becauſe the Sheriff hath alſo care and charge of the Peace, (Lambert 381.) and ſo is there to object againſt ſuch perſons as ſhall be committed by him.

The Sheriff is to ſummon 24. diſcreet men of the County to be at the Seſſions to ſerve of the Great Inqueſt, &c.

He is alſo to warn all Coroners, Conſtables, Bayliffs of Hundreds, and Liberties, &c. and ſome of every Hundred for Jurors, to appear at the Seſſions, &c. according to the form of the Precept directed to him for that purpoſe, which ſee hic cap. 47.

And if the Sheriff ſhall make default of Attendance at the Seſſions of the Peace, the Juſtices of Peace may amerce or fine him for ſuch his default.

In other cales the Sheriff is to execute the Proces, Precepts, Warrants, and other lawful commandments of the Juſtices of Peace. And therefore upon a Precept from any two Juſtices of the Peace (the one being of the Quorum) the Sheriff is to ſummon the Seſſions of the Peace, and to return the ſame. See hic fol.

All Bayliffs and other Miniſters of Liberties ought alſo to attend the Juſtices of Peace at their Seſſions, and muſt execute their procelle, &c. 27. H. 8. cap. 25. See hic poſtea cap. 121.

If any Sheriff (or Bayliff of Franchiſe having return of the Kings Writ) ſhall ſlack and not make due execution of the Precepts of the Juſtices of Peace, to them directed for the returning of Juries to enquire of forcible Entryes, &c. or Riots, &c. they ſhall forfeit to the King

20. l.

20.l. for every default, &c. See Stat. 8. H. 6. cap. 9. & 19. H. 7. cap. 13. hic cap. 87.

All Sheriffs, and Bailiffs of Liberties, muſt truely execute all ſuch Proces as ſhall come to him or them from the Juſtices of Peace, before whom any preſentment ſhall be made touching decayed Bridges, or annoyance of Bridges, upon pain to make ſuch fine, as ſhall be aſſeſſed upon him or them by the ſaid Juſtices. 22. H. 8. c. 5. P. Bridges. 8.

If the Juſtices of Peace ſhall grant out any Proces againſt any ſervants, or labourers, departing into other ſhires, the Sheriff muſt duely execute ſuch Proces upon pain of twenty pound. Stat. 2. Hen. 5. cap. 4.

Alſo the Juſtices of the Peace (as well out of their Seſſions, as from their Seſſions of the Peace) may in many caſes direct their Precepts, or Warrants, and other Proces to the Sheriff, Underſheriff, Bailiff, or other like Officer for the adminiſtration of Juſtice, And the Sheriff and other his Officers are to execute the ſame, accordingly. See my Country Juſtice pag. 303, 305, & 367.

By the Stat. 12. R. 2. cap. 10. it is ordeyned that every Juſtice of Peace ſhall take for his wages or coſts iiij s. for every day of the Seſſions, and ij s. for his Clerk; which wages ſhall be levyed of the Fines and amerciaments of the ſame Seſſions, by the hands of the Sheriff: And that the Lords of Franchiſes ſhall contribute to theſe wages of the Juſtices, according to the quantity of their parts of the Fynes and amerciaments.

After by the ſtat. of 14. R. 2. cap. 11. it was provided, that the Eſtreats of the Seſſions of the Peace ſhall be doubled (or Indented) by the Clerk of the Peace, and that the one part thereof ſhall remain with the Sheriff, and the other part thereof to be delibered to the Barons of the Exchequer, And the names of the ſaid Juſtices of Peace, and the number of their dayes of ſitting at their Seſſions ſhall be written in the ſame Indenture, to the intent that the Sheriff may know to what Juſtices he ought to pay the wages of the Seſſions, and to whom not.

And by the ſame ſtat. it is further ordained, that neither Duke, Earl, Baron, nor Baronet, ſhall have or receive any wages, for the time of their Seſſions, or for the ſaid Office.

Note, that if a man do forfeit a Recogniſance for the Peace, (to the King) becauſe he kept not his day of Appearance at the Seſſions; Or if the Recog. be forfeited for any breach of the Peace; theſe forfeitures are not liable to the payment of the ſaid Juſtices wages.

Alſo the Iſſues returned upon Jurors, are not liable to the payment of the ſaid wages: But if the Jurors who ſhould have ben upon the great Enqueſt do make default of appearance, for the which they be amerced, of theſe amerciaments the ſaid Juſtices wages may be levyed, although there were no Inquiſition made at the ſame Seſſions.

The ſaid wages of the ſaid Juſtices of Peace, ought alſo to be levyed of the Fines and Amerciaments of the ſame Seſſions, and not of any other Seſſions holden either before or after.

And yet if a man be indicted at one Seſſions, and at the next Seſſions, or at any other Seſſions after, he maketh his Fine, this Fine ſhall be liable to theſe wages of thoſe Juſtices before whom the ſaid Indictment was taken.

The Juſtices of Peace may have their action of Debt againſt the Sheriff for their ſaid wages being unpaid.

And the Lords of Franchiſes ſhall be contributary to the ſaid Juſtices wages, &c. where the Lord of the Franchiſe hath the Fines and

Amerciaments of his tenants, or of the inhabitants of ſuch Towns, &c. there ſuch Fines and Amerciaments ſhall be rated proportionally, and the Sheriff may detain and keep in his hands, ſo much thereof, when the Lord of the Franchiſe demands the ſame in the Exchequer: But if the Lord ſhall levy the ſame by his Officers (as he may by the Kings grant) then the Juſtices of Peace are to be payed by the Lord himſelf, &c. Cromp. 177.

The Juſtices of Peace, by their Commiſſion have power to enquire de quibuſcunque vicecomitibus, ballivis, Cuſtodibus Gaolorum, & aliis Officiarlis, qui in Executione Officiorum ſuorum (concerning matters belonging to the Juſtices of Peace to Enquire of) indebite ſe habuerunt, aut tepidi, remiſſi, vel negligentes fuerint: And to hear and determine the ſame, according to the Laws and Statutes of this Realm.

CAP. 100.

The Sheriff is to execute the Precepts of Commiſſioners of Sewers.

The Commiſſioners of Sewers have authority to make and direct Writs, Precepts, Warrants, and other commandments, to all Sheriffs, Bayliffs, and all other Miniſters and Officers, as well within liberties as without, before the ſaid Commiſſioners or ſix of them, at certain dates, times, and places to be returned, &c. 23. H. 8. c. 5.

Sheriffs ſhall return and cauſe to come before the ſaid Commiſſioners (at ſuch dayes and places as they ſhall appoint) ſuch and ſo many Jurors, &c. honeſt and lawfull men of their bailiwick or ſhire, (as well within liberties as without) as ſhall be expedient for inquirie. Ibid.

All other Miniſters and Officers, as well within liberties as without, ſhall be attendant unto the Commiſſioners of Sewers in and about the due execution of their commiſſion. Ibid.

If any Sheriff or other Officer, ſhall be negligent in the due execution of the premiſſes, the ſaid Commiſſioners may (as it ſeemeth) puniſh them by diſtreſs, fines and amercements, or otherwiſe, as to the ſaid Commiſſioners, (or ſix of them) ſhall ſeem expedient, &c. Ibid.

And by the ſtatute made 7. Jacobi Regis, All Sheriffs (Bailiffs, Officers, and other the Kings Miniſters whatſoever) within the Counties of Norfolk and Suffolk (as well within liberties as without) ſhall from time to time be attendant, ayding and aſſiſting to the Commiſſioners of the Sewers, and to every ſix or moe of them, for and concerning the returning of the Juries before the ſaid Commiſſioners; as alſo for and concerning all ſuch other things as ſhall concern their ſeveral offices and places reſpectively, in or about the execution of all things in the ſaid Act contained; upon pain to forfeit ſuch paines, penalties, fines, and ſums of money as ſhall be ſet or impoſed upon them, by any ſix or moe of the ſaid Commiſſioners, &c. which ſaid penalties, &c. ſhall and may be levied, by diſtreſſe, ſale of goods and impriſonment, &c. and ſhall be imployed and diſpoſed of, in and about the preſervation of the Fenne grounds and draying of the waters there. 7. Ja. c. 20.

The

The Sheriff alſo to execute the Precepts of other Commiſſioners.

Sheriffs, or their ſufficient Deputies, ſhall at their own proper coſts and charges give their diligent attendance upon all Warrants and Precepts directed to them from Commiſſioners, and other ſuch Officers or perſons as ſhall have authority to write to the Sheriff for any manner of ſervice, whatſoever by the Laws of this Realm ought to be done by the Sheriff: And ſhall make ſuch return thereof, as the Law, or need ſhall require.

Bankrupts. As the Commiſſioners upon the ſtatute of Bankrupt (made 13. Eliz. cap. 7.) may cauſe the lands, tenements, annuities, offices, and goods, &c. of Bankerupts, to be viewed, rented, and appraiſed unto the beſt value they may, and then to make ſale thereof, &c. And for the appraiſing of ſuch lands, &c. the ſaid Commiſſioners (ex Officio as it ſeemeth) may make and direct their Precept or Warrant to the Sheriff, for the returning of a Jurie before them, for appraiſing and valuing thereof: And ſuch Commiſſioners (may as it ſeemeth) ſet a fine upon the Sheriff for not returning ſuch a Jurie before them, tamen quære hoc.

See Fitz. 119. f. A Writ of Attendance directed to the Sheriff, by Commiſſioners aſſigned to take an Account, &c. and to make return of a Jury before them the ſaid Commiſſioners.

Alſo Fitz. 257. d. A writ awarded to the Sheriff, to return a Jury before Commiſſioners (aſſigned to enquire of the age of the Kings Ward) at a certain day and place to be appointed by the ſaid Commiſſioners, by their Precept and Warrant made to the ſame Sheriff.

Sheriffs ought to obey and execute all Precepts and reaſonable requeſts made to them by Commiſſioners for the Subſidy, for the Execution of the ſaid Commiſſion, ſo far as to the Office of the Sheriff belongeth to do. See the ſtatutes of grants of Subſidyes.

If any under Collector for the Subſidy cannot leby the ſums compriſed within his Eſtreats, &c. the Commiſſioners for the Subſidy may direct their precept to the Sheriff (or other Officer) to diſtreyn ſuch perſon indetted, his executors, adminiſtrators, ſermours, and aſſignes, &c. And for want of diſtreſſe to arreſt and attach the body of ſuch perſon indetted, and to keep him in priſon without bail untill he hath paid the ſaid ſum, &c. And the Sheriff to whom ſuch Precept ſhall be directed by the ſaid Commiſſioners, ought to execute the ſame. ibm.

The Sheriff in ſome things is to execute the Precepts of Eſcheators.

Note that Eſcheators by the Common Law may make and direct their Precepts or Warrants to the Sheriff, for the returning of Juries before them; And may alſo aſſeſſe and ſet a fine upon the Sheriff, for not returning of a pannel or Jurie before them, &c. 7. H. 6. 12. Br. Fines pur Contempts 18. And this Eſcheators might have done by the Common Law.

And yet for that Eſcheators for their private gain uſed to take en-

queſts (to enquire before them, as well by virtue of the Kings Writs, as by force of their Offices) favourably and not duely, by people not impannelled nor returned to them by the Sheriffs of the Counties, to the griefvance of the Kings ſubjects, &c. Therefore by a Statute made, 8. H. 6. c. 16. it was ordained, that no Eſcheator or Commiſſioner ſhall take any enqueſt, but of ſuch perſons or people as be returned and impannelled by the Sheriff, in the County within which he is Eſcheator or Commiſſioner.

By the ſtatute 34. H. 8. every of the Sheriffs within the Counties of Wales, ſhall have power within their Sheriffwicks, as Sheriffs in England, and ſhall accompliſh and execute all the lawfull commandments and precepts of the Juſtices, &c. and of Eſcheators in all things appertaining to their offices and authorities. 34. H. 8. c. 26.

The Sheriff in ſome Caſes is to execute the Precepts of Coroners, &c.

NOte alſo that Coroners by the Common Law may make and direct their Precepts and Warrants to the Sheriff, for returning of Juries before them; And may alſo Aſſeſſe and ſet a fine upon the Sheriff for not returning of a Pannel or Jury before them, &c. 7. H. 6. 12. Br. fines pur contempts. 18.

By the ſtatute made Anno 34. H. 8. it was ordained, that every of the Sheriffs within the Counties of Wales, ſhall have full power within their Sheriffwicks, to do as Sheriffs in England; and ſhall accompliſh and execute all the lawfull commandements and precepts of the Juſtices, &c. and of Coroners, in all things appertaining to their offices and authorities. 34. H. 8. c. 26.

By the ſtatute made An. 3. E. 2. Sheriffs ſhall have Counter Rolls with the Coroners, as well of Appeals, as of Enqueſts, of Attachments, Abjurations, Utlawryes, and of other things which to that office belong. Stamf. 64. & Fitz. Coron. 186. 3. E. 1. c. 10. P. Coroners, 3. & 16.

And to this purpoſe Maſter Bracton lib. 2. de exceptionibus ad Appella, ſaith thus, Eſt aliquando diſſentio in recordo faciendo, inter Coronatores & vic', cum uterque debeat habere ſuum Rotul', in quibus quandoque varia continen', quandoque Concordant. Et habent Record quandoque Coronat' per ſe ſine vic', ut ſi vic' mortuus fuerit, vel amotus, & rotuli non inveniant'. Si vero Rotulus vic' diſcord' à Rotulis Coronat', & rotuli Coron̄ conveniunt, tunc eorum ſtabit' recordo, quia Rotulus vicec' nihil operat' niſi ad teſtim̄. Et quid ſi rotulus unius Coron̄ diſcord à rotulis aliorum, cum plur' fuer'? ſtandū eſt plural'. Si autem non ſunt niſi duo Coron̄, & diſcord, tunc ſtabit rotulis ipſius cum quo concordat rotulus vic'. Si autem ſunt ibi quat' Coronat' & duo diſſent' à duob', nec appareat vic' qui Rotul' habet ad teſtific', tunc ſtabitur illis duob' qui cum Appell' conven̄, &c. Stamf. 83.

Again Maſter Bracton libro 3. tit. de Corona, ſaith thus, Cum quis alium appellaverit de pace, & plagis, videre debet Coronator plagas illas, & illas menſurare cujus ſunt longitudinis, & cujus profunditatis, ſive factæ fuerint in Capite, ſive alibi, & quibus armis; Et hæc omnia faciet Irrotulari cum teſtimonio vicecom̄ ſi præſens fuerit in Inquiſitione facienda, vel ſaltem in Com̄. ſi Appellum factum ſit in Comitatu.

Alſo

Alſo upon a fugam fecit preſented before the Coroner, the goods being ſeiſed by the Sheriff, ought to be priſed by an Enqueſt, and the appriſement to be Inrolled by the Sheriff and Coroners, &c. Stamf. de Prerog. fol. 47. d.

Mag. Chart. cap. 17. But no Sheriff, Coroner, or any other Bailiff of the Kings ſhall hold plées of the Crown: ſcz. they ſhall not hold plées of any felonie, nor of any lands (or other Real things but by a writ of Juſticies) Nor of any treſpaſs vi & armis, &c. And yet the Sheriff, or Coroner may enquire of the death of a man, and of other things belonging to their offices. See hic antea fol. & hic poſtea cap. 107.

The Clerk of the Market alſo (who is an ancient Officer to ſée that all weights and meaſures be according to the Kings ſtandard in the Exchequer,) may hold a Court, and make his Proces or Precepts to Sheriffs (and Bayliffs of Towns) to return Juries before him, at a certain day and place by him to be appointed, by which Juries he may enquire of things incident to his Office. Cromp. *Author des Courts.* fol. 22.

CAP. 101.

The Sheriff in ſome Caſes is to Aſſiſt the Ordinarie.

The Sheriff by his oath, is bound to do all his power and diligence to deſtroy and make to ceaſe all hereſies called Lollaries or Lollards within his Baliwick or County.

Alſo the Sheriff (being required) is to aid and aſſiſt the Ordinary, and Comiſſary, for the ſuppreſſing of hereſies within his County.

Note, that this part of the oath which the Sheriff taketh, for the ſuppreſſing of hereſies, ſéemeth to be by force of the ſtatute 2. H. 5. c. 7. which ſtatute is ſince repealed by the ſtatute. 1. E. 6. 12. & 1. Eliz. 1.

Now concerning that ſtat. of 2. H. 5. cap. 7. made againſt a ſect of Hereticks (ſo then termed) called Lollards; the ſtat. it ſelf is not only repealed as aforeſaid; But the perſons then called Lollards by the Papiſts were indeed the true Profeſſors of the Word of God, as appeareth in Mr. Fox his Book of Martyrs. pag. 540. So that the Oath of the Sheriff in that behalf were fit to be amended.

For the Papiſts taking advantage thereof write as followeth; That Lollards was the vulgar name of Wickliffs followers, and therefore the Sheriffs Oath to perſecute Lollards, King Edward the firſt, Queen Elizabeth, and King James would not have ſuffered, Nor the Proteſtant Sheriffs would take ſuch an Oath, if they accounted Wickleſiſts Proteſtants, thus ſay they. Pr. 440.

Walter Birckbeck in his Book called the Proteſtants Evidence, part 2. pag. 85, 86. ſaith, that the Lollards were a company of true and godly profeſſors: And that they were ſo called from one Raynard Lollard, who was burned in Germany for Religion and oppoſing the Pope.

How far the Sheriff was in former times, to aid the Ordinary for the ſuppreſſing of hereſies, and puniſhing hereticks, See Fitz. 269. d. et Br. titulo Hereſies.

But now the ſtatutes made againſt Lollards or Hereticks (as they were termed) ſc. the ſtat. 5. R. 2. c. 5. 2. H. 4. c. 13. 2. H. 5. c. 7. et 25. H. 8.

H. 8. c. 14. &c. ſtand all repealed by the ſtat. made 1. E. 6. c. 12. And therefore at this day, a man before he ſhall be adjudged an Heretick muſt be convicted of hereſie, by the Archbiſhop, and all the Clergy of that Province, ſc. by a Provincial Synod, and muſt abjure thereof, and after Abjuration muſt fall into a relapſe of that or ſome other Hereſie, and be newly convicted, and condemned by the Clergy of that Province, in their general Council of Convocation, And yet after ſuch conviction and condemnation, the Ordinarie ought not to deliver him to the Lay power, or Sheriff, to be burned, without the Kings Writ purchaſed and had therefore: whereas before (by the ſtatute 2. H. 4. c. 15.) every Biſhop within his Dioceſs, might have convicted, abjured, and condemned a man of Hereſie; And upon the Biſhops Warrant, the Sheriff ought to have burned him, and that without the King's Writ. Fitz. 269 d. Br. Hereſie.

And quære what the Sheriff at this day may do, for the deſtroying, or ſuppreſſing of Hereſies, more than to execute the Kings Writ, for burning of ſuch as ſhall be convicted and condemned, as aforeſaid.

CAP. 102.

The Sheriff is to proclaim certain Statutes, &c.

Statute of Winch.

EVery Sheriff in England ought in perſon four times in every year, to proclaim the ſtatute of Wincheſter (made 13. E. 1. againſt Homicides, burning of houſes, robberies, and other felonies) within every Hundred of his Bailiwick, and in all Faires and Markets by his Bailiffs (as well within liberties as without:) And this is parcel of his oath, and is by force of the ſtatute made anno 7. R. 2. c. 6. and the purpoſe and intent thereof was, that the offendors ſhould not be excuſed by ignorance; but theſe Proclamations are not made at this day. Vide Dr. ſt. 146, 147. 13. E. 1. c. 1. 28. E. 1. c. 17.

Statutes of Purveyors.

Alſo every Sheriff ought to proclaim all the ſtatutes and ordinances made of Purveyors (not repealed) four times in his year, through his Bayliwick, upon pain of 10 li. But it ſeemeth the Sheriff is firſt to receive the ſaid ſtatutes, together with the Kings commandment for doing the ſame, and then he ought to proclaim them accordingly; and he ought then alſo to deliver the ſame to his ſucceſſor by Indenture, for him to proclaim the ſame upon the like pain. 1. H. 6. c. 2. 20. H. 6. c. 8.

Unlawfull games.

Sheriffs ſhall make Proclamation four times in the year, ſcz. every quarter once, in every Market to be holden within their Counties, of the ſtatute provided againſt unlawfull games, and for maintenance of Archery: but it ſeemeth that none of theſe three former ſtatutes as for the Proclamations are now in uſe. 33. H. 8. c. 9.

Rates for wages.

The Sheriff upon receit of any Proclamation printed, and ſent down by the Lord Chancellor, ec. or upon receit of any rates of wages made by the Juſtices of Peace of that County, and ingroſſed in parchment under their hands and ſeals for the rates of wages of ſervants and labourers, ec. ſhall forthwith cauſe Proclamation to be made of the ſeveral rates ſo made, in every Market Town within his limits (or at leaſt in ſo many places within their authorities as ſhall be convenient;) The ſame Proclamation to be done in open market, and to be fixed upon ſome poſt, in ſome convenient place of the Town. 5. Eliz. cap. 4. 39. Eliz. c. 12. 1. Ja. c. 6. & 29.

Hawks.

If any findeth a Hawk that is loſt, he muſt preſently bring the ſame 34. E. 3. c. 22. 37. E. 3. c. 19.

to

to the Sheriff of that County (where it is taken up,) and the Sheriff muſt make Proclamation, in all the good Towns in the County, that he hath ſuch a Hawk in his cuſtodie; and if the Lord and owner which loſt the ſame Hawk, or any of his ſervants come to challenge it, and proveth reaſonably that the ſame is his Lords or Maſters, he is to pay for the coſts, and to have the Hawk again; and if none come within four moneths to challenge the Hawk, then the Sheriff ſhall have the Hawk, making gree to or with him that did take up the Hawk, if he be a ſimple man; and if he be a Gentleman, and of eſtate to have the Hawk, then the Sheriff is to re-deliver him the Hawk, taking of him reaſonable coſts for the time that he had him in his cuſtodie, &c. reaſonable allowance for the keeping thereof.

Proclamations to be made by the Sheriff.

31.El.ca.3. *Summons in Real actions.*

For avoiding of ſecret ſummons in real actions, after ſummons upon the land, and fourteen daies at leaſt before the day of the return thereof, the Sheriff ſhall make a proclamation of the ſummons upon a Sunday, immediately after Divine ſervice and ſermon, if any ſermon there be, & if no ſermon there be, then forthwith after divine ſervice, at or near to the moſt uſual dor of the Church or Chappel of that Town or Pariſh where the land whereupon the ſummons was made doth lye. And that Proclamation ſo made, as aforeſaid, ſhall be returned together with the names of the ſummoners; And if ſuch ſummons ſhall not be proclaimed, and returned, according to the tenor and meaning of this Act, then no *Grand Cape* to be awarded, but an alias and pluries ſummons, as the caſe ſhall require, untill a ſummons and proclamation ſhall be duely made, and returned, according to the tenor and meaning of this Act, 31. Eliz. 3. *Returned.*

6 H.8. cap.4. *Upon Utlaries.*

Alſo for the avoiding of ſecret outlaries, &c. upon every Exigent where Writs of Proclamation are to be awarded, the Sheriff of the County to whom any ſuch Writ of Proclamation ſhall be directed, before any utlary pronounced, ſhall make three Proclamations within his County, at three ſeveral dayes (two of his Proclamations to be made in full Court of his County or ſhire-court; And the third Proclamation to be made at the general Seſſions in thoſe parts where the party defendant is ſuppoſed to be dwelling, &c.) that the party yield his body to the ſheriff of the County to whom ſuch Exigent is awarded, ſo that the

31.El.c.3. P.Exig' 13. ſheriff may have the body at the day of the return of the Exigent to anſwer the plaintiff: But now by the ſtatute of 13. Eli. one Proclamation is to be made in the open County-Court, another at the general quarter Seſſions of the Peace, and the third at or near the moſt uſual Church-dor of that Town or Pariſh where the defendant ſhall be dwelling at the time of the Exigent awarded, and upon a Sunday immediatly after divine ſervice (and ſermon, if any be) and the ſame (third proclamation) to be made one moneth at the leaſt before the quint' exact', by virtue of the ſaid Writ of Exigent; and that all Utlaries had and pronounced, and no Writ of Proclamation awarded, or not returned according to this ſtatute, ſhall be utterly void.

1. *I. le county.* 2. *Al ſeſſions* 3. *Al oſtium Eccleſia.*

1.E 6.c.10. 5.E 6.c.26. P.Exig' 6. *Wales, &c.*

Alſo whenſoever any Writ of Exigent ſhall be awarded (in any action or ſute in the Kings Bench, or Common Pleas) againſt any perſon dwelling in Wales, Lancaſhire, or Cheſhire, one Writ of Proclamation ſhall be alſo awarded, &c. and every ſheriff (of every of the ſaid Counties) to whom any ſuch Writ of Proclamation ſhall be directed,

rected, ſhall make proclamation of the ſaid Writ of proclamation, according to the tenor of the ſame, and ſhall make true return of the ſame, according as the ſame Writ ſhall require.

Alſo by another ſtatute made anno 31. El. Writs upon proclamations, and Exigents, againſt any perſon dwelling within the County Palatine of Durham, ſhall be directed to the Biſhop (or Chancellor) of Durham, &c. And the ſaid Biſhop, &c. ſhall by his Mandate directed to the Sheriff of the ſaid County Palatine, cauſe proclamation to be made of the ſame writs of proclamation, according to the tenor of the ſame; and ſhall make true returns of the ſame, into ſuch Courts as the tenor of the ſame writs of proclamation ſhall require. 13.El.c.9.

All Utlaries pronounced againſt any perſon upon any ſuch Exigent awarded againſt any perſon dwelling within any of the ſaid Counties of Wales, Lancaſhire, and Cheſhire, as alſo within the ſaid Biſhoprick or County Palatine of Durham, and no writs of proclamation awarded in form aforeſaid, or not returned as aforeſaid, ſhall be clearly void, and of none effect. P. Exigent. 6. & 15.

Alſo if the Sheriff ſhall not duely execute and make true return of ſuch writs of proclamation, &c. he ſhall be amerced at the diſcretion of Juſtices. 6.H.8.c.4.P.Exigent.5.

And the Sheriffs of every the ſaid Counties of Wales, Lancaſhire, and Cheſhire, as alſo the Biſhop or Chancellor of Durham, &c. which ſhall not make true return of every ſuch writ of proclamation to them directed, &c. they ſhall loſe for every ſuch default 6 l. the one half to the King, the other half to any perſon which will ſue for the ſame. 1.E.6. c.10.5.E.6.c.26.31.El.c.9. P.Exig' 8. & 17.

Averment. If the Sheriff ſhall not make all theſe proclamations in caſe of Utlary, according to the ſtatutes, &c. yet by the Common Law the party being outlawed ſhould not habe averred this againſt the Sheriffs return, (ſcz. to ſay that there was but one, or two proclamations made by the Sheriff, &c. or to ſay, that the Sheriff made no proclamation at the Church-dor, or Seſſions, &c.) but in ſuch caſes the party ſo unduely outlawed, ſhould habe had his Action of the Caſe againſt the Sheriff, and ſo recobered his dammages, &c. See the opinion of Keble 10.Hen.7. fol.23. & Br. Action ſur le Caſe 122. 10.H.7.f.23.

Upon Utlarie.

But now by the wordes of the ſtatute of 6.H.8.cap.4. All Utlaries had contrary to the ſame ſtatute ſhall be aboided by aberment without ſuing of any writ of Error. 6.H.8.c.4.

And by the ſtatute 31. Eliz. cap. 3. in fine before any allowance of any writ of Error, or reberſing of any Utlary, ſhall be had by plée or otherwiſe, throughſ, or by want of any proclamation to be had or made, according to the form of this ſtatute, the Defendant and Defendants in the original action ſhall put in bail, not only to appear and anſwer to the plaintiff in the former ſute, in a new action to be commenced by the ſaid plaintiff for the cauſe mentioned in the firſt action, but alſo to ſatisfie the condemnation, if the plaintiff ſhall begin his ſute before the end of two terms, next after the allowing the writ of Error, or otherwiſe aboiding of the ſaid Utlarie. 31.El.c.3.

Upon an Appeal, or Indictment, againſt any perſon dwelling in a foreign County, before any Exigent awarded, immediately after the firſt Capias returned, another writ of Capias ſhall be directed to the Sheriff of the County, whereof by the ſaid Inditement the party is ſuppoſed to be, upon which ſecond Capias, if the Sheriff cannot find the party within his County, Then the Sheriff ſhall make proclamation in two Counties (before the return of the ſame writ) that the party ſo Appealed or Indicted ſhall appear before the Juſtices, &c. where he was ſo Indicted

dicted or Appealed, at the day contained in the ſaid laſt writ, to anſwer the matter, &c. 8.H.6.cap.10. And if the party appear not thereupon, and that be returned by the Sheriff, then the Exigit ſhall be awarded; and every Exigit awarded, or Utlary pronounced upon any ſuch Indictment, &c. againſt this form, ſhall be void. ibm.

Upon a writ de Excom Capiendo, if the Sheriff returneth Non eſt inventus, then ſhall there be awarded a Capias with a proclamation therein contained, upon the receit whereof, the Sheriff ſhall in the full County Court (or elſe at the general Aſſiſes and Gaol delibery, Or at a quarter Seſſions for the peace to be holden within the ſame County) make open proclamation, ten dayes at the leaſt before the Return, that the party or parties named in the ſaid writ, ſhall within ſix dayes next after ſuch proclamation yield his or their bodies to the Gaol of the ſaid Sheriff, there to remain according to the tenor of the firſt writ de Excom Capiendo. And if the Sheriff ſhall thereupon return that the parties have not yielded their bodies accordingly, thereupon ſtill ſuch proces ſhall go out, and the Sheriff ſhall make the like proclamation, untill the party yield himſelf. 5.Eliz.cap.23.

If any Riot, Rout, or unlawfull aſſembly of people ſhall be, and that the ſame, or the truth thereof, cannot be found by the Juſtices of peace upon their Enquiry, Then within one moneth the ſaid Juſtices and Sheriff (or Underſheriff) ſhall certifie into the Kings Bench, &c. the whole fact, &c. (ut hic cap.4.) And if the offendors do not appear in the Kings Bench upon the firſt proces, Then another writ ſhall be directed to the Sheriff to take the Offendors, and to bring them into the ſaid Court, &c. And if they cannot be found, Then the Sheriff ſhall make proclamation in his full County Court next enſuing the delibery of the ſaid ſecond proces, that the ſaid Offendors be before the King and his Council in the Kings Bench, Or in the Chancery in the Vacation, within three weeks then next following, And if the offendors come not then in, and that the proclamation be made and Returned, the Offendor ſhall be convicted and atteynted of the Riot, &c. 13.H.4. cap.7.

*7.H.4.c.15. Sheriffs (at the next County holden after the delibery of the Kings writ) ſhall make proclamation in their County Court, of the day and place of the parliament, &c. ſo that all intereſſed may attend to the election of the Knights of the parliament, &c. See hic antea fol. *Of the parliament.*

23.H.6.c.11. Sheriffs when they have receibed the Kings Writ for the levying of expences of the Knights of the parliament, at the next County Court, they ought to make proclamation, that all parties intereſſed be at their next County, to aſſeſſe the ſaid wages, &c. See hic antea tit. Knights of the Parliament.

In the Writ of Admeaſurement of Dower, as alſo in the Writ of Admeaſurement of Paſture, when the ſute is come to the grand diſtres, daies ſhall be given, within the which there may be holden two Counties, at the which open proclamation ſhall be made, that the Defendant ſhall appear at the day contained in the Writ, to anſwer the Plaintiff, at which day, if he do appear, the ſute ſhall proceed betwixt them, and if he do not appear, and the proclamation be in form aforeſaid teſtified by the ſheriff, Admeaſurement ſhall be made by the default. Weſtm 2. 13. Edw.1.7. Fitz.125.b.126.c. *Admeaſurement de Dower.*

In bre de Admeaſerment de Dower, ou Paſture, le Proces ore (per le ſtat. de Weſtm *2. cap. 7.) eſt Summons, Attachment, & un grand Diſtreſs, in quel dnex Proclamations ſerra faits (ſc. la ſerra jour done devant que le bre ſoit retorne, que deux Countyes poet eſtre tenus, ſc. per enter*

le date del bre, & le Retorne de ceo, Et in chaſcun County un Proclamation ſerra fait, que le Deff. vener & mre pur que Admeaſerment ne ſerra fait, &c. Vide hic cap. 49. & 113.

In breife de Meſne, le plt poet aver Sommons, Attachment, & le grand Diſtreſs, que avera jour de retorne per tiel temps, que deux Countyes poent eſtre tenus, Et in cheſcun County le vic. ſera un Proclamacion, que le deff. (ſc. le meſne) viender de reſponder al plt (ſc. de acquite le tenant, &c.) Et ſil ne vient, & le bre ſoit retorne, &c. donque il ſerra forejuge, ſc. le tenant ſerra tots temps enapres tenant al Signeur paramount, come le meſne ſuit, & per meſme les Servics. Fitz. 137. b.

Nota, que in bre de Meſne, Et in breifs de Ameaſerment, ilz navera frq; deux Countyes, & deux Proclamations: Mz in bre de Gard, ilz averont 3. Countyes, & 3. Proclamacions, Ut patet per hunc verſum.

Bis Clamat Meſtins, bis Admeaſ. Cuſtodi ſed ter.

Auxi nota que ſont divers manners de actions de Gard. ſc. bre de { *Droit de Gard.* / *Ejectmt de Gard.* / *Raviſhmt de Gard.* }

Et dicitur que les breifs de Droit de Gard, & de Ejectmt de Gard fuer all Common Ley, devant ceux ſtatts, Et pur ceo ſont appell de Communi Cuſtodia: *Mz le bre de Raviſhmt de Gard eſt done per le ſtatt. de* Weſtm 2. cap. 35. Fitz. 139. 1. *que devant ſuit frq; Treſpaſs.*

Mz al Common Ley, in bre de Droit de Gard, & in bre de Ejectmt de Gard, ilz n' averont auter proces frq; Summons, Attachmt, & Diſtreſs infinite, & iſſint voilt delayer les gardians infinite, &c. Sed ore plus haſtife remedy eſt done per les ſtatts, ſc. que in ceux deux plees (de droit de Gard, & de Ejectmt de Gard) le party avera Summons, Attachmt, & un grand Diſtreſs, & ſi le deff. ne vient al grand Diſtreſs, que le plt avera un auter bre Retornable per cye longe temps, que 3. Countyes poet eſtre tenus; Et in cheſcun County Proclamation ſerra fait, & le bre ſerra lye un faits, &c. Et ſi le deff. ne veigne, &c. il ſerra forejudge de ſon Gard, &c. Fitz. 143. s. & Fitz. Retor. de vic. 41.

Et le vic. cauſer le bre cheſcun foits deſtre lye in plein County, & auxi le Proclamation deſtre fait in plein County.

Communi cuſtodia.

When any ſute dependeth between parties for the wardſhip of an heir, or land, or both, by the common Writ de Communi cuſtodia, Summons ſhall be made, &c. and when they have paſſed to the great Diſtreſſe, there ſhall be a time given, wherein there may be holden three Counties at the leaſt, in every of which Counties there ſhall be open proclamation made, that the defendor ſhall appear in the common place at the day contained in the Writ, to anſwer the Plaintiff, at which day if he do not appear, and the proclamation be ſo teſtified, the firſt, ſecond, and third time, judgement ſhall be given for the Plaintiff, ſaving the Defendants right, if he will at another time defend the ſame; In the ſame manner it ſhall be done in an action of Treſpas, when any man complaineth himſelf to be eject from ſuch wardſhips. Weſtm 2. 13. Ed. 1. 35. Vide ſtat. de Marl. cap. 7. 52. H. 3. 7. 13. E. 1. c. 35.

Ejectione cuſtodiæ.

This ſtat. of Marl. 52. H. 3. cap. 7. is in theſe words, If the Deff. come not to anſwer within the ſaid half year, Nor the Sheriff cannot get his body, to have it before the Juſtices, to anſwer, &c. now by theſe words it may ſeem, that the Sheriff ought to take the body of the Deff. or Defendor, and to impriſon him by force of this Diſtreſſe; But the words

words are not so to be understood, or rather seem to be of none effect; for in the Writ of distress no mention is made of the taking of the body of the Deft. And therefore in such case the Sheriff shall do no other thing, but only to return Issues upon the Deft. by force of this Distress, sc. of all his goods and chattels, (other than such as are excepted by the stat. of Westm 2. cap. 39.) And then as a Rebel, &c. the Deft. shall lose the seisin of the Ward, &c. Lectur.

Auxi si bre de Droit de Gard soit prot, & Distress one Proclamation issit, & pend cel bre le Proces est discontinue per Demise le Roy, ou d' ascun party, &c. in ceo case in le Resommons, le plt ou ses executors avera Distress one Proclamation, &c. Stat. Westm 2. cap. 35.

CAP. 103.

The Sheriff is to make certain Purveyances for the King.

10. E. 3. c. 4. 14. E. 3. c. 19. *Purveyances for Horses.*

By the old statutes it was provided, that all Purveyances that should be made for the Kings great Horses, so long as they did sojourn in any Country, should be made by the Sheriffs of the Counties, where such Horses did sojourn, and not by any other; And that the Purveyances made by the Sheriff in this case, shall be delivered to the Keepers of the Horses, by Indenture. And the Sheriff was to make such Purveyances, of the issues of his Bayliwick: And the number of the Horses for which the Sheriff should make such Purveyance, should be conteined in his * Commission or Warrant, &c. And that no Purveyance should be made over this number, saving that the chief Keeper had a Hackney; And the Sheriff was to take good heed that the County were not charged of more than should keep the Horses, But for every Horse a Servant, without bringing Women, Pages, or Dogs with them. And if any more were found abiding in the charge of the Countrey, they were to be brought to prison, there to remain, till the King had sent his will. 14. E. 3. 19. But now quære of the validity or use of these statutes. Dicitur that it appeareth by the Roll, that this stat. of 10. E. 3. is holden for to be no statute.

* Commandment.

14. E. 3. c. 19. *For Dogs.*

And in the same manner it was commanded to the Sheriffs, that they should make Purveyances for the Kings Dogs, of the issues of their Bailiwicks: And that such Purveyances should be made by none other, but by the Sheriffs. And that it should be contained in his commandement, the number of Dogs, for which he should make Purveyance, over which number no Purveyance should be made, so that they should live of their certain, without charging the Country. And if any found himself grieved against this Ordinance, he should recover against the Sheriff for such grievance done unto him. Quære also of the use of this statute.

CAP. 104.

The Sheriffs Courts.

IT appeareth by Fineux chief Justice 12. H. 7. that at the first all administration of Justice was in one hand, scz. in the King, (so as no Law was used, noz Justice administred, but only before the King himself) but afterwards the administration of Justice was divided into Counties, so as this power was committed to the Sheriff within every County: And foz his better government of the County, and foz the punishment of evil doers therein, the Sheriff had two Powers oz Courts appointed unto him; the one the Sheriffs Lozne, unto which all the County, scz. every man of a certain age should come (yea were compellable to come) there to hear the articles and things given in charge, that so they might not be ignozant of the Laws, whereby they were to be governed, and where also they were to be sworn to their allegeance to the King; the other was the County Court, the which was to give remedie between man and man, foz any thing between them under xl s. And so by these two Courts all the County was governed at the first. 12. H. 7. f. 18. 2. Br. Leet.

Torne.

Countie.

Afterwards, foz that this was too great a thing foz the Sheriff (being but one person) to do, by reason of the multitude of people, and foz their ease (and better government, and more ease administration of Justice) Leets were derived out of the Lozne, and were graunted to the Lozds of Franchises oz Manozs; And Hundzed Courts were derived out of the Countie Court, and were granted oz letten by the Kings of this Realm to the Lozds of certain liberties (especially to Religious men, Noble men, and others of great place) to hold plea also under xl s. of Contracts, &c. made within the Hundzed.

Leets.

Hundred Courts.

The Hundzed Court is to be kept every three weeks (by the Baylifs of the Hundzed). And the Judges of this Court are the Suters.

And there may be holden every Plevnt between party and party, as there may be in a Court Baron: And this Hundzed Court is to the same effect as the Court Baron: And it is the Kings Court Baron.

Note that the Hundzed Court, is where a man hath by the Kings grant a Court Baron foz all the Inhabitants of the Hundzed, oz of some other great Precinct, to be holden before him, oz his Baylif, &c. and it is in all respects as a Court Baron. 12. H. 7. 17. Finch. 122.

And all the Inhabitants within the Precinct of such Liberty oz Hundzed, by reason of their Tenements there, shall be Attendant, and owe suit, to the Hundzed. Rede. 12. H. 7. fol. 17. Finch. 248.

Hundzed Courts (certain Franchises excepted) were after taken into the Sheriffs hands again, and were re-joyned unto the County Court, and that by force of the Statutes of 2. E. 3. cap. 12. & 14. E. 3. cap. 9. See Fitz. Peticō. 1.

And now the Sheriff is Judge not only of that grand Court foz the County (called now the Sheriffs Lourne) but also he is Judge of all the Hundzed Courts which be not given away from the Crown. V. 9.

Minsh. verbo Bailie, saith, that these Hundzed Courts (certain Franchises excepted) are by the Stat. 14. E. 3. stat. 1. cap. 9. brought into County Courts. & Dr. Cowel.

And he describeth what a Hundzed is. Verbo Hundred.

Sr. Fr. Bacon writeth, that by occasion of many mischiefs falling out

out at thoſe great Aſſemblies of the Sheriffs Torne, the King was moved to allow ſubdiviſions of every County into Hundreds, and every Hundred to have a Court, whereunto the people of every Hundred ſhould be aſſembled twice a year, for Turbey of Pledges, and uſe of that Juſtice which formerly was executed in that Grand Court of the County (or Sheriffs Torne) And that the Court or Earl appointed a Bayliff under him to keep the Hundred Court. V.8.

The Sheriff hath now the keeping of two Courts for the County, committed or aſſigned to him, ſcz.

1. The Torne for the government of their County, wherein he is to enquire of Criminal cauſes, and to reform common Nuſances, &c. throughout the whole Shire.

2. The County (or Shire) Court, to hold plea within their County of debts, detinue of chattels, treſpaſſes, and the like, being under 41 s. and to replevy the cattel diſtrained and impounded by others. But if the Sheriff ſhall hold any plea in any other Court than in the County Court, it is coram non Judic. 7. E. 4. 23. Br. Juſticies 3.

But yet in this County Court, by a writ of Juſticies, a man may ſue for any ſum. Alſo in this Court the Sheriff by a writ called an Exigent, is to proclaim men ſued in the Courts at Weſtm, to render their bodies, or elſe to be outlawed. All which more particularly ſee more fully in that which here followeth.

See more of theſe three Courts, ſc. the Torne, and the Hundred, and the County Court, Sr. Fr. Bacon his uſe of the Law, pag. 5. &c.

CAP. 105.

The Sheriffs Torne.

The Book called *Speculum Juſticiar.* libro 1. cap. 16. treating of the Sheriffs Torn, ſaith thus,

Co. 9. pref. Sheriffs of ancient ordinance do hold general Aſſemblies twice a year, in every Hundred, whither all the Freeholders within the Hundred are bound to come, by the ſervice of their fees, that is to ſay, once after Michaelmas, and another time after Eaſter: and becauſe the Sheriffs for the doing hereof make their Turns (or Courſes) through the Hundreds, ſuch Aſſemblies are called the Sheriffs Turne, or Sheriffs Courſe. *In cheſcun Hundred.*

And Mr. Bracton writeth thus, Torne de vic' eſt Circuitus vic' p omnia Hundred. Comitatus ſui, bis in Anno terminis & locis Stat. & uſitat. populi Comit' pro pace Regis obſervand.

Brit. fo. 71. And Walter Lambert ſaith, that this Court of old was called alſo the Sheriffs Poſte.

This Court was ordained to be holden in every Hundred for the eaſe of the people; and therein the Sheriff is to deal with matters touching the King himſelf, and with matters touching the Common Wealth, (ſc. to enquire of Criminal cauſes, and of common Nuſances, and them to reform) And to this court (the Sheriffs Torne) is for the adminiſtring of Juſtice Diſtributive. But this court was not ordained for any particular or private matters between party and party, but for ſuch things the county court, and the hundred court, were appointed; and in thoſe courts Juſtitia Commutativa is adminiſtred.

So

So then in this court it belongeth to the Sheriffs to enquire of all offences personal, and of all the circumstances of offences done in those Hundreds, and of wrongs done by the Kings and Queens Ministers, and of wrongs done to the King, and to the comminaltie, &c.

And such things as the Sheriff could not redress in the Torne, was used to be presented by the Sheriff in the Exchequer. Spec. Justic. libro 1. cap. 17.

Suters. It appeareth by Britton, that all the Freholders, and terretenants, and other persons of the age of 12 years or above, which are resiant or inhabiting within the Hundred, ought to come to the Sheriffs Torne, (none excepted but Barons, Clergie-men, and women, children under 12, and men above 60.) V. 8. for these, their presence was not, nor is not necessary there, for that they are never sworn upon any Enquests, especially to enquire of any thing inquirable before the Sheriff. See 52. H. 3. c. 2. & 10. & Br. Leet. 42. & 39. & Finch. 125. Pitz. 160. c. 161.

And all these did appear at this court to give or renew their Pledges for their Allegiance. V. 8.

Note, Barons, &c. although they are exempted from their Appearance at the Sheriffs Torne, for any matter or cause which appertains to the Torne, yet the words of the said stat. are further, Nisi eorum præsentia ab aliquam causam specialiter exigatur, by force of which words, if any Baron, or any other of the said persons exempted, shall be summoned to come to the Torne for any other special cause, as by the Kings commandment upon any special occasion; Or for to aid the Sheriff in executing his Office there, if any shall make resistance; Or for to give in evidence concerning any Purpresture, or other thing there inquirable, and lying within their knowledge; Or upon other the like occasion, Then such persons upon such cause, ought to come to the Sheriffs Torne, &c. Lectur. Mri Chichborne Anno 1. H. 8.

Also if any Baron, Prelate, or other Clergy-man, or woman, have any lands or tenements which they hold by * sute service to the Sheriffs Torne, then they ought to come and appear there, and to do sute there, according to their said tenure. *quare.

Concerning Clergy-men the words of the stat. of Marlebr. cap. 10. are thus, Necesse non habeat ibi venire Archiepiscopi, Episcopi, Abbates, Priores, nec aliqui viri Religiosi, by the equity of which words all secular Priests seem also to be intended: And yet by the Common Law, men of Religion, and women were exempted from appearance at the Sheriffs Torne.

Also men-children of the age of xij years, are compellable to come to the Sheriffs Torne, there for to hear the charge, and so learn the Laws, &c. And also to be sworn there to the King, and to be his leige men, (or to be his faithfull and loyal subjects, &c.) Br. Leete. 39. & Fitz. 161. a. Britton dicit eos jurare, quod Regi fidem portabunt, quodque neque felones erunt, neque eis Consentient. Cow. 82. But they shall not be sworn to enquire, or to present any thing there; for no man shall be sworn upon or in any Enquest, &c. before he cometh to his age of xij years. Litt. 259. & Co. L. 68. 122. b.

Townships shall not be amerced by Justices, because all being xij years old come not before the Sheriff and Coroners, to make enquiry of (Robberyes, burning houses, and other) things pertaining to the crown, so that there come sufficient out of those Towns, by whom such Enquests may be made full; Except Enquests for the death of a man, whereat all being xij years of age ought to appear, unless they have reasonable cause of absence. 52. H. 3. cap. 24.

And

Br. Leet 38. And yet tenants in antient demeſne are not bound to come to the Sheriffs Torne. Fitz. 161. c. Br. Aunc' dēe. 43. 49.

52. H. 3 c. 1. Alſo they which habe Hundzeds of their own to be kept, ſhall be bound to appear at the Sheriffs Torne, but in the Bailiwick or Hundzed where they be dwelling. Stat. 52. H. 3. cap. 10.

The Engliſh ſtatute Boks are ſo tranſlated; but the old Latin ſtatute Boks are in theſe wozds, Qui in diverſis Hundredis habeant Tenementa, non habent neceſſe ad hujuſmodi Turnos venire, niſi in ballivis ubi fuerint converſantes, and with this alſo agreeth the old French.

Fitz 160 a. And if any man who hath lands oz tenements in dibers places of the County and in dibers Hundzeds, be diſtreined to come to the Sheriffs Torne, in any place where he dwelleth not, (but that he be dwelling within the pzecinct of another Hundzed) then he may habe a wzit directed to the Sheriff, commanding him to diſcharge the party foz coming to any other Torne, ec. than within the Hundzed where he dwelleth. The fozm of which wzit you may ſee Fitz. 160. a. & Regiſtr fol. 174.

Alſo if any Lozd hath a Leete oz View of Frankpledges of all his Tenants of his Pannoz, which is within the Hundzed, thoſe tenants are not compellable to appear at the Sheriffs Torne, foz that the Torne, and the Leete, are both as one Court: And the Leete is no other, but where the King hath granted to a particular man to hold this Court within a certain precinct (as within his Pannoz oz Signiozy) So that when it is in the Kings hands, it is called the Sheriffs Torne, foz that the Sheriff is to hold oz kep it; And when it is in the hands of another perſon (by the Kings grant oz otherwiſe) it is called a Leete oz a View of Frankpledges, and then ſuch as ought to appear at the Leete ſhall not be compelled alſo to appear at the Torne, Foz no man ſhall be compelled to appear at two Leets. Lectura Mri Chichborne.

Quære if the Lozds (themſelves) of Leetes, be not compellable to appear at the Torne.

If a man hath a View of Frankpledges (oz a Leete) of all his tenants within his Pannoz, and he hath one tenant whoſe houſe wherein he dwelleth part thereof doth extend it ſelf within the Pzecinct of his Signiozy, and part thereof within the Pzecinct of the Hundzed out of his Signiozy oz Pannoz, ſuch a tenant ought to appear at the Sheriffs Torne, and not at his Lozds Leete, foz that the Torne being the Kings Court ſhall be pzeferred. Lectur. pred.

If a mans houſe wherein he dwelleth extendeth oz ſtandeth in two Counties, oz Hundzeds, (ſc. his hall, ec. in the one and his chamber wherein he lyeth in another) here he ſhall be adjudged to be of that County oz Hundzed wherein he coucheth oz lyeth in the Night. ibm.

Again, all Reſiants within the Hundzed ought to appear at the Sheriffs Torne, and therefoze if I do hire a ſervant foz one pear, and the ſecond day after he is come to dwell with me, the Sheriff holdeth his Torne, my ſervant ought to appear there. But if a ſtranger cometh and lyeth at my houſe thzee oz four dapes, within which time the Sheriff holds his Torne, ſuch ſtranger ſhall not be compelled to appear at the Torne, if he hath any dwelling place of his own, oz be elſewhere reſiant; Otherwiſe he may.

A Sojourner ought to appear at the Torne. ibm.

By the Common Law none are compellable to appear at the Torne foz his lands, foz this ſute to the Sheriffs Torne (oz Lozds Leete) is a Sute Royal, which is alwapes by reaſon of the perſon, and not of any Land. ibm.

See hic cap. 8. and the reaſon why it is called Sute Royal.

An

An Alien reſiant within the Hundred is compellable to appear at the Torne; and to be ſworn there to the King, for his Allegiance: and yet this makes not him a Denizon. ibm. & 14.H.4.fol

But men of great age (ſc. above 70.) and men Decrepit, and ſuch as are ſick, were at leaſt excuſeable by the Common Law.

Note, that if the Léete of any Lord ſhall happen to be ſeiſed into the Kings hands for miſuſer, or for any other cauſe, Then all the people reſiant within that Léete ſo ſeiſed, &c. ſhall now come to the Sheriffs Torne. ibm.

Alſo when the Lord of a Léete ſhall neglect to kéep his Léete (at leaſt once a year) if the Sheriff ſhall hold his Torne within that Hundred during ſuch times of neglect, thoſe which be Reſiants within ſuch Lords Léetes may be compelled to come to the Sheriffs Torne, there to be ſworn to their Allegiance (if they were not ſworn before at the Léete;) and there to be ſworn to enquire of things apperteining to the King and Common-wealth (happening within the Précinct of the Léete ſo neglected,) which ſervices or ſuit otherwiſe would utterly be neglected and loſt through the defaults of Lords of Léets. ibm.

The Jurie. In the Sheriffs Torne after the appearance of the ſuters, twelve (at the leaſt) of the moſt diſcréet and ſufficient Fréeholders within the Hundred, ought firſt to be impannelled and ſworn (by the Sheriff) to enquire of, and to préſent all things there enquirable and préſentable: and after (as a ſecond Jury) all the reſt which appear there ought to be ſworn (*per dozens, per villes*) by the dozeners and villages, or the Tithing men with their Tithings, and theſe ſhall préſent or give in their verdit, to the firſt twelve Jurors, ſuch things as ſhall be given them in charge. And if they ſhall conceal any thing, they ſhall be amerced: But if they ſhall préſent any thing that is falſe, and the xij firſt Jurors ſhall find that their verdit is falſe, for this they ſhall not be amerced. Brit 71. Cromp. 212.

And when the dozeners and villages or Tithings have delibered their préſentments to the ſaid firſt Jurie, and that the firſt Jurie are agréed of their préſentments, then they muſt give up to the Steward or Court Kéeper, ſuch préſentments as they will ſtand to and abow; and if there be any of felonie, they muſt deliver thoſe up by themſelves to the Steward préſily, and the reſt openly. Cromp. 213. a.

But it is uſed in ſome places, that one Enqueſt is impannelled for the body of the Hundred of the Fréeholders, to whom the Conſtables (or Thirdborroughs, &c.) of every Town and Village within the ſame Hundred, which come to the Sheriffs Torne, do préſent upon their oaths, the defaults within their ſeveral Towns to the Steward, and he informeth the dozeners, of ſuch things as they have ſo préſented. Cromp. 212.

Fineux in 12 H. 7. fol. 18. ſaith, that every man within the Hundreds, Burroughs and Towns, ought to come to the Sheriffs Torne (by reaſon of their allegiance) And that the Conſtables of the Hundreds, and Petty Conſtables of the Burroughs and Towns, ought there to préſent the defaults of miſdoers, &c. ſc. every of them muſt préſent the defaults committed within their ſeveral Lymits: and this préſentment of the High Conſtables, and Petty Conſtables ſhall be made and delibered in, to the ſaid firſt Jury (as it ſéemeth) and that upon Oath, otherwiſe their préſentment is void.

The ſufficiency of thoſe Furors. But by the ſtat. made 1. R. 3. c. 4. it is now enacted, That no Bailiff, or other Officer, ſhall impannel or return in any Pannel, any perſon to be taken or put in, or upon any Enquiry in any Sheriffs Torne, but ſuch as be of good name and fame, and which have Fréehold lands or Tenements within the ſame County, to the clear yearly

value

value of twenty ſhillings at the leaſt, Or Coppihold lands or Tenements within the ſame County, to the clear yearly value of xxvj. ſhillings and eight pence at the leaſt. And if any Officer ſhall impannel, or Return any perſon contrary to this Statute, he ſhall loſe for every perſon ſo returned or impannelled (not being of ſuch ſufficiency) forty ſhillings, And the Sheriff other forty ſhillings, the one half to the King, and the other half to ſuch as will ſue for the ſame, &c. And beſides every Inditeſment in other manner taken, before the Sheriff in his Torne, ſhall be void. Stamf. 85. See ſtat. 11. H. 7. cap. 26.

Lonceo ſtat. de 1. R. 3. *parle que tiel Jurours expender xx s. Freehold* per Ann. *on xxvj s. viij d. Coppihold, Semble que ceux ſommes doit eſtre certen & Annuall, & que per reaſon del gayne del Orchyard, de Garden, de Markett, de Wreck, & huiuſmodi, eut ans que ſon frq; Caſnal, & nient certen, home ne ſerra jure de tiel Enqueſts, &c.*

Mes ſi deux Joyntents ſont, & que eux ne poet expender forſq; xx. s. Freehold per Ann. *uncar eux ambideux poent eſtre jurus pur ceo, &c. come ſemble.*

Weſtm. 2. 13. By the ſtatute made añ. 13. E. 1. c. 13. it is ordained that Sheriffs in their Tornes (and in other places where they have authority to enquire of malefactors or treſpaſſes) ſhall cauſe their Enqueſts to be made (or make their inquiſitions) by xij. men at the leaſt, and by lawful men, which ſhall put their ſeals to ſuch inquiſitions, or Inditements, that ſo it may the better appear that the Inditement was taken by twelve lawful men. *Their number.*

If there ſhall be xv. or xvj. ſuch Jurors upon the Inquiſition, it ſeemeth good; and if but xij. of them agree, and thoſe xij. ſhall ſet their ſeals to ſuch Indictment or Inquiſition, it ſufficeth: But if all the xvi. ſhall agree, then alſo muſt all thoſe xvj. ſet their ſeals thereto.

At the Common Law, and until this ſtat. of Weſtm̃ 2. cap. 13. dicitur, that Sheriffs in their Tornes would often Endite certain perſons by v. or ſix men, and by ſuch as were outlawed, &c. and by force of ſuch Enditements would impriſon the perſons ſo Indited, and them keep in priſon, until they had made a Fyne to them, at their own wills, and that the perſons ſo impriſoned had no remedy, to prevent which miſchief this ſtat. of Weſtm̃ 2. was made.

Afterwards, for that divers Sheriffs, uſed to alter or change ſuch Endictments, after they were lawfully taken (ſc. where the Enditement was for Felony, they would make it Treſpaſs, Et è Converſo) and the better to conceal ſuch their abuſes they would oftentimes imbeſil the ſame Inditements, To prevent which miſchief there was another ſtat. made Anno 1. Ed. 3. cap. 17. as followeth.

And becauſe the ſaid Inquiſitions taken by the Sheriffs ſhould not be changed, imbeſilled nor concealed, therefore by another ſtatute made añ. 1. E. 3. c. 17. it was enacted, that Sheriffs (and Bailiffs of Liberties, and all others who take indictments at their Tornes, or elſewhere) ſhall take thoſe indictments by Roll indented (or Indentures made betwæn the Sheriff and the Jurors) whereof the one part ſhall remain with the Inditors or Jurors, under the hand and ſeal of the Sheriff, and the other part whith the Sheriff, or him that taketh the Enqueſt, ſo that the indictment ſhall not be embeſilled, &c. and ſo that one of the Enqueſt may ſhew the one part of the indentures to the Juſtices, when they come to make deliverance. But now the Sheriff or his ſteward is to ſend or deliver their part of theſe Indictments or Preſentments to the next Seſſions of the Peace, &c. Vide hic poſtea ſtat. 1. E. 4. c. 2. *The Preſentments ſhall be inacted.*

Uncar

Uncar ſi le vic. prendr lour Enqueſts ou Inditements ſãz Indentures niet ob: ceo ilz ſont aſſetts ſufficient: Car ceo ſtat. ne voet que ſilz auterment ſont, que ilz ſerra voids, ou per nul, come autres ſtatutes expreſs.

Auxi com que tiel Enditement ou Inquiſition ne ſoit Enſeala, uncar ſi ſoit priſe, ſemble d'eſtree ſufficient. Cauſa qua ſupra.

Auxi per le dit Stat. de Weſtm 2. cap. 13. *tielz perſons que fuer Endites en le Torne, par* xij. *loyal homes, le vic. adtunc avoit power de impriſoner eux, (come ilz puiſſent al Common Ley) Et le power del vic. in ceo point remayne tanq; le feſans del ſtat. de* 1. E. 4. cap. 2. *le quel veies* hic poſtea.

Mz per le Common Ley le vic. poet aver tenus ſon Torne a quel Liew que il voile, deins le Hundred: Come ſi un Pont, ou Cawſy, ou un Common chimm. fuer defective, &c. il puiſſoit aver appoint ſon Torne d'eſtre tenus la lon tiel default fuit, &c. Lectur Mri Chichborne.

Auxi per le Common Ley ilz puiſſont aver tenus lour Torne, cye ſovent que ilz pleira; Et a quel temps del Ann que ilz voile; Mz per le male & Covet ouſneſs del vic. ceo order que fuit reaſonable, ilz ſubvertont in grand prejudice del common people, Car aſcun vic. voile tener lour Torne pluſors foits per le intent que ilz voile aver Amercements de ceux queux ne appearont, & nẽy per le Common Weale: Auxi ilz voile tener le Torne in tiel Liew ou ilz penſe que pluſors voile fair default per l'intent d'aver lour Amerciaments; Auxi ilz voile aver tener lour Torne a quel temps ils penſe que pluſors voile fair defaults, pur aver lour Amereiaments, & ſic vent pur lour ſinguler & private proffitts. Pur remedy queux miſchieffs le ſtat. de Mag. Charta. cap. 35. provide ſic, Nec aliquis vicecomes vel ballivus ſuus fac' Turnum ſuum p Hundredum, niſi bis in Anno, & non niſi in loco debito & Conſuero, ſc. ſemel poſt paſcha, & interum poſt feſtum Sancti Michis: *Et nient ob. ceo uncar ilz voile tener lour Torne al auter buſye temps*, ſc. *en temps de Harveſt (que fuit apres* feſtum Paſchæ,) *Et in le Lent (que fuit apres Michlemaſs,) Et pur remedy ceux fauxities & miſchieffs un auter ſtat. fuit fact* Anno 31. E. 3. cap. 14. *par quel fuit ordeyne que le vic. tiendr ſon Torne deins un mois prochein apres le feaſt de Paſche, & deins un mois prochein apres Michelmas.*

The place. So note, that the Sheriff ought to kæp his Tozne in every Hundzed within his Countie, as is akozeſaid. Co. 9. Preface. Fitz. 160. a. Br. Leet. 42. 9. H. 3. c. 33.

But the Sheriff ought to kæp this his Tozne no where but in due place and accuſtomed, and that by fozce of the ſaid ſtatute of Magna chart. cap. 35.

And if the Sheriff ſhall kæp his Tozne in loco conſueto, he may be indicted and puniſhed foz the ſame. See Dyer 151. Sir John Savages caſe. & Kiel. 192.

Time. Allo the Sheriff ought to kæp, oz hold this his Tozne but twice in the year, ſc. once within one moneth next after Eaſter, and again within one moneth next after Michaelmas; And if he ſhall hold his Tozne at any time after the moneth from the ſaid feaſt dayes of Eaſter and Michaelmas, it is void, by the ſtat. of 31. E. 3. And all indictments and pzeſentments (either of Felony, oz otherwiſe) ſo taken by him after the ſaid moneths are Coram non Judice, and altogether void. See 38. H. 6. fol. 7. And beſides the Sheriff ſhall loſe his pzofits thereof, &c. Br. Leet 17. & 21. & Indictments 9. 27. Vide Co. 10. 76. Stamf. 84. & 6. H. 7. f. 2. 31. E. 3. c. 15. 6. H. 7. f. 2. 3. Fitz. Torne.

The reaſon why the Tozne muſt be holden within the moneth next after Eaſter and Michaelmas, appeareth in the ſtatute of 31. E. 3. cap. 15. ſcz. 6. H. 7. f. 2.

15. ſcz. for that the Torne being held in Lent, it hindred devotion, and being in Harveſt, it hindred the people in their buſines, &c.

Mz. poſito que le vic. teigne ſon Torne apres le mois, & fait le Record d'aver date deins le Mois, & un home eſt Endite a meſme le Torne, de Felony, Et ceo Record vient devant Juſtices que ont power de luy arreigner ſur cel Record, Si cēy que eſt iſſint Endite voile dire que le Torne fuit tenus al auter jour que le Record fait mention, le ſemble il ne ſerra reſceive a defeatur ceſt Record per tiel Averment, &c. tamen quære inde *intant que ſon vie eſt in jeopardye.* See hic cap. 42.

Alſo the ſheriff kéeping his Torne oftner than twice a year, or after the ſaid moneths (next after the feaſt daies of Eaſter, and of ſaint Mich. th'archangell) he may be indicted for the ſame, as it ſéemeth.

Fitz. Leet 11. Note (by ſome opinions) that the ſheriff in his Torne holden after Eaſter, ought not to enquire of any action popular, &c. but only he is then to take their ſute which are ſuters, and to take the view, ſcz. quod Trithinga tenentur, ſcz. that all above the age of twelve years come and appear there, &c. (the cauſe of which there appearance, ſée hic cap. 8.) But at his Torne holden after Michaelmas, then he ſhall enquire of ſuch things as are there inquirable. See ſtat. 9. H. 3. c. 35. 8. H. 7. 4. ab. & Br. Leete. 23.

Co. 4. 33. & 6. 12. This Court (called the Sheriffs Torne, Turnum) is a Court of Record, and is belonging and incident to the office of the ſheriff, and ought not to be ſevered from it: And the ſheriff is Judge therein, and is to appoint Clerks under him in this Court, ſuch as he will anſwer for at his peril. *Eſt Incident. Vic' Judge.*

42. E. 3. 4. 31. Br. officer. 831. But the ſheriff ought not to take any thing, for the holding or kéeping of his Torne: Neither can he préſcribe to take any thing, for that he is an Officer removable. *Ne poit preſcribe.*

Fitz Leete 11. The ſtyle of the Torne or Court muſt be thus, Viſ. Francipleg' dñi Regis tent' apud L. coram vicec' in Torno ſuo, &c. And not Torñ vicec' tent' tali die apud L. For this word Torne ſignifieth but the perambulation of the ſheriff, and is not the Name of the Court. *The Style.*

The forme of a Warrant to proclaim or warn the Sheriffs Torne.

A. B. miles vicecomes com *Cantabr.* I. S. ballivo Hundred de R. ſalutem. Ex parte Dñi Regis tibi mando, quod proclam fac' viſ. Francipledg' Dñi Regis, apud L. tenend. coram me in torno meo tali die, &c. Et interim venire facias ad tunc & ibm xxiiij. probos & legales homines, una cum quatuor hominibus, & præpoſitis cujuſlibet villæ, Hundred præd. Ad faciendum quod eis ex parte Dñi Regis ad tunc & ibidem fuerint injungend. Et quod tunc tu ſis ibidem in propria perſona tua, ad faciendum quod ad Officium tuum pertinet. Et hoc non omittas ſub periculo incumbente. Datum, &c.

CAP. 106.

What things are inquirable in the Sheriffs Torne, at this day.

THe sheriffs Torne in ancient time was one of the highest Courts in it self, which the King had: For at the first they had more authority than the Justices of Peace now have; for the Sheriffs in their Tornes did enquire of all Treasons which were Treasons by the Common Law, and of Felonies, &c. Also in the Torne they did Enquire of Alienations without Licence by the Kings Tenants, &c. And of Alienations in mortmayn; And of such as held by Pontage, or to repair any Bridge, &c. and as the great Enquest (at the Assises, or Sessions of the Peace now) are sworn to inquire of matters through the County, so this Torne was in stead or place of such great Enquest, &c. Lectur. Mri Littleton super stat. Westm 2.

Also in this Court the High Constables of Hundreds, and Petty Constables were appointed and sworn; breakers of the Peace were punished by fine and imprisonment; the parties beaten or hurt were recompenced upon complaints of Damages; All Appeals of Murther, Mayhem, and Robbery, decided; Contempts against the Crown, publick annoyances, Treasons and Felonies, and all other matters of wrong, betwixt party and party, for lands, or goods. Sr. Fr. Bacon of the use of the Law. p. 5, 6.

Treasons. The Sheriff in his Torne at this day hath power, and ought to enquire of such as are mortal Enemies to the King, Queen (his wife) or to their children: And of the Councellors, Procurers, Consenters, and Ayders; and of all Treasons at the Common Law. Cromp. 212.

Also of such as falsifie the Kings Seal. Stat. 18. E. 2.

And such as falsifie the Kings money; or shall wash, or clip the same, Finch. 241. but M. Brooke maketh a quære thereof, titulo Leete 26.

Felonies. They are also enquire in their Torne, of all manner of Felonies by the Common Law, as of murder, manslaughters, and other homicides: See the stat. 52. H. 3. c. 24 & 3. Ed. 1. c. 11. & Britton. Cromp. 211.

And yet see Br. Leets. 26. & Fitz. Torne 5. and the Book 22. E. 4. fol. 22. by the opinion of all the Justices, that the power of the Sheriff in his Torne, was to enquire of all Felonies, at the Common Law, except the death of a man. Finch. 125.

They are there to enquire of Burglaries, Robberies, and Thefts, and of the receivers of such offenders.

Of burners of houses, or stacks of corn feloniously.

Of breakers of prison, being therein for Felony.

Of ravishing of women, stat. 18. E. 2. Cromp. 212. Yet the Book 22. E. 4. & Br. Leete 26. & Fitz. Torne 5. are contrary, as being a Felonie by statute, and not by Common Law. Sed de hoc quære.

Of Poysoners.

Of Sorcerers, Conjurers, and Witches: which offences were Felonie by the Common Law, and the offenders therein were to be burned. See Fitz. 269. b.

Of Petty Larcenies, in stealing Hens, Geese, or Sheafs of Corn, &c.

Of such as take Theft-boote.

But

Br. Leets 26. But note, that the Sheriff is his Torne, hath no authority to enquire of any Felonies by ſtat. as cutting out of tongues; putting out of eies, &c. 28. E. 3. 95. 21. E. 21. Fitz. Torne 5.

Note alſo, that no Sheriff within any of the Counties of Wales, ſhall have power to enquire of any manner of Felony, in any their Leets, Law dayes, or Tornes, within the ſame Dominion to be holden. ſtat. 35. H. 8. c. 26.

Alſo Sheriffs ſhall enquire in their Tornes of the eſcape of any Felon; And of any perſon impriſoned (for any other cauſe) which is let go without warrant or mainprile. Stat. 18. E. 2.

And of ſuch as have abjured the Realm, and are returned without licence.

Of Outlaws, which return without the Kings Warrant.

Of Treaſure trove.

Nota, que Coyne trove, comment que ne fuit abſcondita in terra, *eſt Treaſure trove*, (*& ſemble Inquirable icy*) Br. Preſentments 24. *Profits le roy.*

Iſſint ſemble de money, plate, ou bullion trove, le owner nient comu; Car ceux ſerra dit Treaſure trove, & le roy avera eux. Br. Coron. 176.

Of Waples, and Eſtraies.

Cromp. 213. Of wreck of the Sea, found and retained.

Of thoſe which claim any Franchiſe real.

Of new Franchiſes, or Cuſtoms, levied on land or water.

If any man hath a Fair, or Market, by grant or by preſcription, and doth not hold, or kæp the ſame Fair of Market, as he ought to do.

It ſæmeth alſo, that the Sheriff in his Torne ought to enquire of all Purpreſtures and Encroachments made upon the Kings Lands or Franchiſes, &c.

Now concerning this word Purpreſtur, there is no ſuch word in uſe in the Latin tongue, but only in our Law; And in the general ſenſe this word Purpreſtur is now taken for any thing which any man by wrong hath encroached upon another, and (by incloſure, or uſage) appropriated unto himſelf. M. Manwood. fol. 59.

And Skeene de verbo Purpreſtur, maketh three ſorts of this offence; One againſt the King; the ſecond againſt the Lord of the Fæ, the third againſt a Neighbour lying near him.

Concerning the King this word Purpreſter may ſæm to be, when another doth take or incroach any thing upon the King, which he ought not to have, whether it be in Juriſdiction, Franchiſe, or Land: As if a man do hold a Fair without the Kings grant, or lawful Preſcription; Or do incroach or claim any liberty within the Kings Foreſt; Or do levy a houle, wall, or hedge, in the Kings High-way; Or upon the Kings-Land: The penalty in theſe caſes is, that he which maketh ſuch Purpreſture ſhall be grievouſly amerced, and the Purpreſture ſhall be pulled down and deſtroyed for ever at the Kings pleaſure. And if it be in land, or buildings, after the Purpreſtur be found by Enqueſt, and the value of it aſſeſſed, it may be ſet at a yearly Rent to be anſwered to the King, if the King will. Lectur. Mri Treherne. And herewith agræth Mr. Glandvile libro 9. cap. 11. tit. Purpreſture. See hic cap. 9.

Vide plus Stat. 4. E. 1. cap. 4. & Cromp. *Author des Courts* 152. & 203.

Vide Minch. verbo Porpreſture & ſcribe hic.

Alſo concerning this word Nuſance, Nocumentum, in our Common Law ſignifieth any thing which tendeth either to the general hurt and annoyance of the Kings Leige People, or elſe to the hurt and annoyance of ſome one particular perſon. But in the Sheriffs

Torne

Torne (as also in the Leete) they are to Enquire only of Common Nusances.

And the Sheriff in his Torne is also to Enquire of Purpestures, Usurpations, or Encroachments, made in any the Kings demesne lands, woods, or upon highwayes, common streets, or waters, to any common annoyance. Stat. 18. E. 2. Vide Co. L. 277. b.

Of all walls, houses, hedges, and ditches, made up, or broken down, to annoyances, ibid.

Whether Highwayes be inlarged according to the Statute of Wincester.

Of wayes, and paths streightned, or stopped.

Of any other Nusances, or annoyances, in the Kings high way, or in any common way or path; By turning or altering them out of their ancient place; By ditches there not scoured. Br. Leete 26. By laying any Carion, or Muck, &c. there.

Of the Kings high wayes, if they be not enlarged and cleansed of bushes and trees according to the stat. of 13. E. 1. c. 5.

Of Nusances in any Rivers, or common waterings by stopping, streightning, or turning them out of their right course.

Of Bridges, and Cawsies decayed, or broken, and who ought to repair them; Or hold any land to repair them.

And of all other, Common or popular Nusances, or grievances done to divers or sundry of the Kings subjects.

Common Trepasses. Also the sheriff in his Torne may Inquire of Affraies. Br. Presentments. 7.

And of Bloodsheds. Br. Leete 26 Fitz. Torne. 4.

If there be any misdoer within the Hundred, whereby any peril may come to any person, of life or of member, the name of such misdoer is to be presented in the Sheriffs Torne.

Of Pound-breaches.

Also all other things being a Trespasse at the Common Law, and popular, is there Inquirable.

But of such things as are trespasses by Statute, or Offences against any statute, the Sheriff hath no power to enquire thereof in his Torne; Except the statute doth expresly therein give authority to the Torne, or Læte. Sæ 28. E. 3. 95. 21. E. 4. 21. 3. H. fol. 1. Br. Leete 19. & 25.

Neither shall any other thing be enquired of in the Torne, but only such Nulances, grievances, offences, or trespasses as are popular and common grievances to many persons, And therefore assaults made to a sole or particular person (although it be done in the Court) yet it is not there Inquirable; Except there be bloodshed. Dyer 234. Fits Torne 1. 4. Finch. 125. 4. H. 6. f. 10. Br. Pres. 7. 2. H. 7. 19.

Neither can they inquire there, of a Close, or Hedge, debruised (or broken) for that is particular. Br. Leete 26. Finch. 125.

Evil members. The Sheriff also in his Torne may enquire of Malefactors in Parks.

Of takers of Doves in Winter by doorefalls, or other engines. 18. E. 2.

Of Usurers. Cromp. 212.

Whether Hugh and Cry be duely made upon Robberies and other Felonies.

Of Hue and Cry levied, and not pursued.

Of Hue and Cry levied without cause.

Of Nightwalkers, Br. Leete 26. and whether night-watches be duely kept.

Of

Of thoſe which go in meſſage of theeves.

Of thoſe which ſleep by day, and watch by night, and fare well, and none know whereof they live.

Of thoſe which continually do haunt Taverns.

Alſo the Aſſiſe of Bread, Beer, or Ale broken, is there inquirable. Stat. 18. E. 2. Br. Leete. 25.

If any Hoſteler or Inholder ſhall make any horſlebread, which is not ſufficient, lawful, and of due Aſſiſe, &c. the Sheriff in his Torne may enquire thereof, and determin the ſame, by the ſtat. 32. 8 cap. 41. & 21. Ja. cap. 21.

So if any Hoſteler or Inholder ſhall make any horſlebread, except he be dwelling in a Town being a thoroughfare, and being no City, Town Corporate, or Market-town, wherein a Common Baker is dwelling; for Bakers ſhall make ſuch bread. 21. Ja. cap. 21.

So if any Hoſteler or Inholder ſhall not ſell their horſlebread, hay, oats, and provender, and alſo all kind of victual, both for man and beaſt, for reaſonable gain, &c. Or ſhall take any thing for litter, it is inquirable, and to be determined in the Torne. And theſe Offendors for the firſt offence ſhall be fined, &c. and for the ſecond offence ſhall be impriſoned, and for the third offence ſhall ſtand upon the Pillory, and after ſhall be forejudged for keeping any Inn again. 21. Ja. cap. 21.

Falſe meaſures, falſe ballances, and falſe weights are there enquirable: Stat. 18. E. 2. Alſo Stat. 9. H. 5. c. 8. the falſifiers and counterfetters of falſe weights are here enquirable.

If any have double meaſures, (as buſhels, gallons, yards, or ells,) and buy by the greater, and ſell by the leſſer, it is there enquirable. Ibid.

And yet ſee the Book 3. H. 7. f. 1. & Br. Leete 19. a preſentment in the Sheriffs Torne, that a man did uſe falſe meaſure of a buſhel, and the preſentment was adjudged to be void, for that it was given by ſtatute, and the Statute gave no expreſſe authority to the Sheriff to enquire thereof.

If night watches be not duely kept (according to the ſtatute of Wincheſter) it is there enquirable.

If any perſon ſhall make a priſon of, or in their own houſes, it is there enquirable: Cromp. 212.

Homeſoken, or forcible entrée into houſes without licence, and contrary to the Kings peace, ſeemeth to be there inquirable: Cromp. 212.

Attachments made by the officers of the Courts of the Eaſt Marches, or Weſt Marches, &c. are there enquirable by the ſtatute of 31. H. 6. c. 3. But ſeemeth to be repealed by the ſtatute 4. Ja. c. 1.

Alſo the Sheriffs in their Torne may enquire of all offences committed, contrary to the ſtatute made 7. E. 6. to avoid the expreſſe, as well of ſpending, as of the prices of wines: and every preſentment thereof taken by the oaths of fif. men in the Torne, ſhall be of ſuch force, as if the ſame were taken in the Kings Bench. 7. E. 6. c. 5.

Alſo they ſhall enquire, if all the Jurors and ſuters which owe ſute to this Court be Come (18. E. 2.) ſcz. if all perſons of twelve years of age or upward, dwelling within the hundred, be come to this Court (except Clerks, * Knights, and women: Cromp. 213.)

Laſtly, the Sheriff in his Torne, hath authority to enquire of all other things or offences that is either felony, or treſpaſſe at the Common Law: and of all other Articles and things enquirable in a Court Leete (if there have been default in the Lord in not keeping his Leete, or if they have been omitted, or not formerly inquired of and found, and redreſſed or puniſhed in the Leet.) For that all Leets were

* Quære de chivalers.

Fitz. Torn 5. Br Leete 26. Co. L. 168. Dyer. 13.

at

at the first derived and taken out of the Sheriffs torne, so that for default of enquirie in Leets of things there inquirable, the same things there omitted, and not enquired of, &c. ought to be enquired of in the Sheriffs Torne, and if it be there omitted, then to be enquired of by the Justices in Eyre, at their coming into the Countrey, or else by the Justices of the Kings Bench, Sée 8. E.4.fol.21. E.3.fol.3.29.E.3. 27. 41.E.3.26.43.E.3.29. & 18. H.6.12. Br. Pref. 1. Cromp. 212.

De Felony, comt que il soit Enquire deins le Leete, uncar il serra Enquire arere in le Torne, Ut dicitur.

If it be found in the Leete of any Lord, that a Bridge lying within the Precinct of the Léete is ruinous, and that such a man ought to repair it, he shall be amerced in the Leete: And yet if after the same default shall be found again before the Sheriff in his Torne, the party shall again be amerced, and the Sheriff may levy that amercement, and neither the Lord, nor party hath any remedy, for this default after the Leete was not presented at the Leete, and therefore being presented at the Torne, it shall be there punished: And if it be not amended before the next Leete, the Lord at his Leete may cause him to be amerced again; and so the party may be amerced, totiens, quotiens, at the Léete, and also at the Torne, untill it shall be amended. Lectur. Mri Chichburne.

Also although at the Léete, the Steward or Jury shall set a payn upon the party, to make, or amend the Bridge, &c. before such a day, yet if the Torne shall be holden before that be amended, the party shall be amerced at the Torne. ibm.

It is a good presentment at the Torne, that such a man ought and used to repair such a Bridge, notwithstanding that they shew not that the party hath any lands to repair the said Bridge.

Mes le Signor del Leete (que ad grant le Roy d'aver le Amerciaments, &c.) avera les Amerciaments (sc. avera allowance del eux in L'eschequer) sur l'enquirie ewe devant le vicount ou devant les Justices, quære & vide Fitz. Leete 13.

And it hath been adjudged that the power of a Sheriff in his Torne, and of a Steward in a Court Léete, is all one: 22. E. 4. Br. Leete 26. sc. that the same authority which the Léete hath within the Precinct thereof, the like the Sheriff hath in this Torne, & è Converso.

Also the Sheriffs Torne is sometimes in our Books called the Kings Léete, and sometimes the Sheriffs Léete, or the Léete of the Torne of the Sheriff: sée Br. Leete 21. & 23. which appeareth also by the style of the Torne, hic antea.

If the Sheriff shall enquire of a Nulance in his Torne, and the same shall be found, which ought to have been enquired of in the Leete of another man, and hath been used to be found there, the Sheriff cannot distrain for the amercement upon this presentment, and if he do distrein he is a trespassor: but if default be in the Lord of the Léete, that he did not inquire thereof, or that the same be not found in his Léete, when it ought to be inquired of, or that it be not punished, or amended, the Sheriff then by the Lords default may inquire thereof in his Torne: 21. E. 3. 3. 28. E. 3. 95. 10. H. 4. 4. And herewith agréeth the Book of 29. E. 3. that if a Nulance, &c. be within a Franchise, the Sheriff ought not to punish this; but it appertaineth to the Lord only to redresse this, for otherwise every Lord might lose his Franchise in every thing: but if apparent default shall be in the Lord, as in not kéeping his Léete, or that he will not punish the offendors, then the Sheriff may enquire thereof in his Torne, and it being found there, the Sheriff may punish the same: sée 29. E. 3. fol. 27. Cromp. 212.

But

But where there is no default in the Lord of the Lẽte (either in not kẽping his Lẽte, not Enquiring of, or not finding, or puniſhing, and redreſſing the fault) there if the Sheriff in his Torne ſhall enquire of ſuch things preſentable in the Lẽte, and ſhall after make his precept to his Bayliff to diſtreyn for any amercement aſſeſſed for any ſuch thing in his Torne, ſuch Diſtreſſe is tortious, *Et le party poet aver ſon Replevy & recover damages come ſemble; Car autrement vicounts poet tots fois prender les proffitts & amerciaments de Seigneurs de Leets, iſſint que ils navera aſcun proffitt por lour Leete.* Vide Fitz. Barr. 289. & 29. E. 3. fol. 27.

Mez le Torne del vicount, come un overſeer del Court Leete, eſt de enquirer ſi les Decenaries ſont pleins, ou nẽy; Et a preſenter les defaults queux ne ſont redreſſe in le Leete. Finch. 32.

Et concernant ceux Decenaries, Nota, que pur le melior expedition de Juſtice, le Hundred fait deviſe in 10. Villes, & chaſcun Ville in 10. Familyes, dont ceux Villes fuerent dits Decenaries; Et en les Decenaries, cheſcun ſerra pledg pur lauter de ſon bon geſter (dont le Court Leet fuit auxi dit Curia viſus franciplegii) *Autermt cẽy que priſt lui en ſon meaſon fuit deſtreu amerce en le Leete.* Finch. 126. Co. 6. 77. b.

But if the Sheriff in his Torne ſhall enquire of any thing, which is not there inquirable, it is void, as being taken Coram non Judice.

If the Sheriff, or the Steward of the Sheriffs Court ſhall enquire, or ſhall take any indictment, or ſhall hold plea, of any thing whereof they ought not, it ſeemeth to be puniſhable. Vide 41. aſſ. 30. Br. Contempts 12. The Lord of a Lẽte fined for that his Steward did take an Inditement unduely. Alſo 2. R. 3. fol. 10. a. the Abbot of Crowland was puniſhed (ſc. his Liberty was ſeiſed) for his Stewards default: And by ſome opinions the Lord of a Court Lẽte, which ſhall kẽp his Court Lẽte by an ignorant Steward, his ſaid Court may therefore be ſeiſed in a Quo Warranto.

Nota, que le vic. avera les amerc' & fines (& divers autres profits) del ceo Court, Et il nad aſcun autre choſe de levier ſon grand ſum oveſque que cheſcun vic' eſt charge ſur ſon account, ſinon de ceſt Court; car le Torne (& les profits del cẽ) eſt al vic': Et eſt ſon Court, & nẽy le Court le Roy per Tremayle 6. H. 7. f. 2. 3.

CAP. 107.

IT ſeemeth in former times that Sheriffs, ſometimes in malice, and ſometimes for their private lucre and gain, did often impriſon ſuch perſons as were Indicted before them, as well in their Tornes, as alſo in other places, by virtue of the Kings Writ or Commiſſion to them granted (and which they might have juſtified to do as well by the Common Law, as alſo by virtue of the Stat. of Weſtm 2. cap. 13. as it ſeems) But the miſchiefs thereof appearing, and ſomewhat to reſtrain their power of impriſoning any man for malice, or profit, or other ſiniſter cauſe, firſt Sheriffs were reſtrained by ſtatute made Anno 28. E. 3. to make any Enquirie by Writ or Commiſſion as followeth.

Whereas in times paſt Sheriffs by vertue of Commiſſions and general Writs granted to them at their own ſute for their private gain, did take divers enqueſts to indite people at their pleaſures; and then took fines of them to their own uſes, and delivered the parties ſo indicted,

without bringing them before the Kings Justices: It was therefore by a
Vic' ne fera Enquirie per breve, &c. stat. made 28. E. 3. ordained, that all such Commissions and Writs 28. E. 3. c. 9.
should from thenceforth be repealed, and none such after to be granted: See 42. E. 3.
so that the sheriff (by that statute) is restrained to make any enquiry by c. 4.
Writ or Commission except in some special cases, whereof see Fitz. 92.
hic postea.

Afterwards for that divers persons were greatly troubled by the inordinate indictments and presentments (as well of felonies and trespasses, as of other things) taken before sheriffs, their undersheriffs and other Ministers at their Torns and Law dayes; which Indictments were often affirmed and found by Jurors having no freehold, &c. and sometimes by menial servants and bailiffs of the said sheriffs, &c. By reason whereof many people were arrested, and put in Prison by the said sheriffs and their Ministers, and then were constrained to pay them great fines, to be delivered out of Prison: And further, the said sheriffs, &c. had the awarding of Proces upon such Indictments when they were found, and the asselling of the fines: and also the said Indictments were often imbealed and concealed: For the reformation whereof it was ordained by a statute made anno 1. E. 4. that upon all presentments and 1. E. 4. 4.
indictments, which shall be taken before any Sheriff (Undersheriff, or other Ministers) in their Torn or Lawdays, they shall have no power to make, or grant out any Proces against any Person so Indicted; Nor to attach, arrest, or put in Prison; nor to assele, levy, or take any Fit. Torn 3.
fines, or amerciaments of any Person so indicted or presented before Br. Presentments.
them, by reason or colour of any such Indictment or Presentment, nor to take of any Person so Indicted or Presented, any Fine or Ranlom; but that the said Sheriff (or other Ministers) shall bring and deliver all such Indictments and Presentments (taken before them in their Torns to the Justices of Peace, at their next Sessions of the Peace that shall be holden in the County where such Indictments or Presentments shall be taken, upon pain that every Sheriff (Undersheriff, Clerk, Bailiff, or other Ministers) failing to deliver or present any such Indictment to the Justices of Peace at such Sessions of the Peace as aforesaid, to forfit forty pound.

Lour Inditements serra deliver al Justices.

A trespasse presented in the Sheriffs Torn, the Sheriff ought to certifie the same Presentment to the next Sessions of the Peace, and there the Justices of Peace are to assele the Fine. Cromp. 159.

Les Justices triers loffendor. And the Justices of Peace are to award Proces, upon all such Indictments and presentments, and to try arrain and deliver the offendors, and not the sheriff, &c. and also the said Justices of Peace, shall have power to set such fine upon every person indicted or presented (in the sheriffs Torn) of or for any trespasse, as it shall seem good to them in their discretions; And the estreats of the same fines and amerciaments shall be Inrolled, and by Indenture delivered to the said sheriff, undersheriff, or their Clerks, or Ministers, to the use and profit of him that
Et estreates le fines, &c. was sheriff, of the said County at the time of the taking of such Indictments or Presentments: and if any undersheriff, Clerk, Bailiff, or Minister shall cause any person to be attached, arrested, or put in Prison, or shall cause to be taken any fine; or ransome, or levy any amercements of any person so Indicted or Presented, by colour of any such Indictment or Presentment (before him or them) taken at their Torn;
Al use le vic. before they have processe from the said Justic. of Peace, or Estreats delivered out of the said Indictments or Presentments (so delivered to the Justic. of Peace,) the sheriff so offending shall forfeit 100. l. the one half to the King, &c. and the other half to the party thereby indamaged.

But

1. Ed. 4. ca. 2. But this Statute extends not to Indictments taken before the Sheriffs of London in the said Citie; Nor to any Person having the grant of fines or amercements by any Letters Patents of the King, &c. Nor to any Person having any Liberties or Franchises by any Letters Patents, or in any other manner by Prescription.

Neither doth this Statute give Authority to the Justices of Peace, to award Processe upon all Indictments taken in the Sheriffs Torn when they be brought and delivered them; but onely of such Indictments as shall be Lawfull and sufficient, and such as contain matter whereof the Sheriff hath Jurisdiction in his Torn, and power to make enquiry by the Common Law or by Statute; for if the Sheriff in his Torn shall make enquiry of Liberties given contrary to the Statute of Liberies, or will enquire of the Statute of Labourers, or Indictione who did Feloniously ravish a woman, or such like, which be not inquirable in the Sheriffs Torn, though such Indictments be by him brought and delivered to the Justices of Peace according to the said Statute made 1. Ed. 4. yet they ought not to award Processe thereupon for that they were taken coram non judice, and so void. Co. 5. 112. & 9. 26.

Br. Presentment 16. Fit. Torn. 3. 4 E. 4. 31. 8 E. 4. 5.

Also if the sheriff, &c. shall not deliver their Indictments and Presentments (found and taken in their Torns) to the Justices of Peace of the same County at their next sessions, according to the aforesaid Statute made 1. E. 4. then such indictments, &c. not so delivered, &c. are void. Vide Fitz. tit'. Torne de Vic' 6.

28. E. 3. c. 9. Stamf. 34. So then (at this day) sheriffs shall make no inquiries, nor take any indictments of Felony, by vertue of any Writ or Commissions procured at their own sute; Nor elsewhere, but in their Torns.

But in their Torns sheriffs at this day may make inquiries, and take indictments of Felony, virtute Officii: wherein notwithstanding they must demeane themselves according to the afore recited stat. Stamf. 34. And sheriffs shall hold their Torns and take indictments, but in convenient and usual times, and places accustomed; And they shall take their indictments by the Oath of twelve men at the least; and by roll indented (sc. those indictments or presentments must be inrolled) and sealed between the Sheriff and the jurors; and they shall take their indictments by men of good name and credit, (legales homines) and sufficient of Estate as appeareth here before.

Fitz 92. c. And yet if any man having the Kings protection, another shall take his goods, or shall enter into his Lands, &c. or shall beat his servants, &c. he may have a special Writ or Commission to the Sheriff (of that County) to make enquiry thereof, and to certifie the same before the King, &c. and thereupon Processe shall be made out against them (in the Kings name) by Venire facias: as upon an Indictment, and that they shall be fined therefore.

Register 153. 154. So if any Bridge or Wall, Cauſie, or Sewet shall be broken to the annoyance of the Countrey it appeareth by the Register, that the King may send his Commission or Writ to the Sheriff, to inquire who ought to make such bridge, &c. and to distrain them to repair it, &c.

28. E. 3. c. 9. 42. E. 3. c. 4. And although by the former Statutes of 28. E. 3. c. 9. & 42. E. 3. it was ordained that no Commission or Writ should be thencefoorth granted to the Sheriff to make any inquiry, &c. yet if the King shall grant out such a Commission or Writ to the Sheriff, quære, if it be not good; it seemeth to Market Fitz. 92. c. that it is not good, for that this Statute bindeth the King that he cannot now grant out such a Commission to the Sheriff; and yet enquests of Office may be taken by the sheriff as in Wast, Redisseisin, &c. See hic cap.

CAP. 108.

The power and Authority of the Sheriff, in, or by reason of his Torn.

By the Common Law, before the stat. of Magn. Charta) the Sheriff in his Torn (as also the steward in a Leet) might have Arreigned one who had been Indited before them of Felony (and so might the Coroners also upon an Indictment sup visum Corporis) Finch. 125. but now by the said stat. of Magn. Charta. Cap. 17. It is ordained, that no sheriff, Constable, Escheator, Coroner, or other Bailiff of the King, shall hold Pleas of the Crown: And therefore the Sheriff in his Torn cannot now hold Plea of any Felony, or other thing pertaining to the Kings Crown: nor of any thing touching any Lands, nor of Debt, Trespasse, or other matter whatsoever. Mag. Chart. 17.

But this Court, and the Authority of the sheriff therein, is onely or principally for the good ordering and government of the Countrey, by taking view of the Suters, and Inquiry and Presentments of offences committed therein against the Peace, and of other common Nulances and Grievances within the County.

But the further proceeding upon such inquiry, presentments, and indictments made and taken before the sheriffs in their Torns, belongeth now to the Justice of Peace, &c. as aforesaid, by force of the stat. of 1. E. 4. c. 2. before recited.

And yet note, that the sheriffs Torn is a Court of Record (in all things that pertain to the Torn,) and the sheriff therein is a Judge of Record, and hath authority (in some cases) to imprison offendors, to assesse fines upon them, and to take Recognisances: As Fitz. 82. Br. Leet 39.

The Sheriff in his Torn (or his Steward there) may commit him or them to Ward, that shall make an Affray in their presence, whilest they be in Execution of their Office: And may also by recognisance bind such Offendors to the Peace; and may commit them to Ward until they have found sureties for the Peace; and all this he may do notwithstanding the said stat. of 1. E. 4.

Also the Sheriff in his Torn, or his Steward there, may command the mæt help, and aid of others, to Arrest such Affrayors.

If any other contempt or disturbance to this Court shall be committed in the said Court, before the sheriff (or steward there) they may impose upon such offendors a reasonable fine: see Br. Leete 14. 36.

The sheriff in his Torn (or his steward there) may take the examination of felons, and may commit them to the Gaol; And may also take the presentment of any felony at the Common Law, committed within their Precinct, as you may see here before. Co. 8. 38.

In former times the High Constables of every Hundred, and the Petty Constables of every Town, were chosen and appointed by the sheriff of the said shire, yearly in the Torn, and there these Constables received their Oath. And at this day they may still be appointed or chosen, and sworn in the sheriffs Torne before the sheriff, or his steward, as well as in the Leete.

In the Leete, or sheriffs Torn, if one that oweth sute thereto, will not be sworn, &c. he shall be fined and imprisoned, (by the Sheriff or steward there) until he hath paid such his fine: Or he may be amerced, and be distrained for such amerciament, by his goods, in any place within the County. Fitz. Leet. 11.

And

And ſo if any that oweth ſute there ſhall make default of appearance, he may be amerced by the Sheriff, and diſtreyned for the ſame amercement, as before. Fitz. Avowry. 194.

But if any Lord hath the view of Franckpledg of all his Tenants of his Mannor, which is within the Hundred, thoſe Tenants are not compellable to appear at the Sheriffs Torne. For the Torne, and the Lete (or View of Franckpledge) are all one Court. And when it is in the Kings hands, it is called the Sheriffs Torne; and when it is in the hands of any other perſon of the Kings grant, (or otherwiſe) it is called the View of Frankpledge, or Lete, or Law day.

Co. 8. 38. So if a ſuter, being ſworn of the Jury there, ſhall refuſe to make preſentment there: or if a Juror there ſhall depart without giving up their verdict, the Sheriff (or Steward) may impoſe a reaſonable fine upon ſuch offendors.

Ibid. So if the Sheriffs, Bailiffs, or other Officers belonging to this Court, ſhall refuſe in Court, to execute their Office, they may be fined as aforeſaid; And ſo in other like cales happening in this Court before the Sheriff, he being Judge therein.

Cromp. 210. a. Upon a preſentment of a Nulance in the Sheriffs Torne, the offendor may be amerced there by the Sheriff, and the Sheriff may diſtrain for ſuch amercements, throughout all his County, by the Book 2. H. 4. f. 24. Br. Leet 41. & 8. R. 2. Fitz. Avowry 194. but now it ſeemeth that ſuch preſentment muſt be delivered to the Juſtices of Peace, and are to try the offendos, &c. and to fine him, and then to entreat the ſame; before the Sheriff may levy or take any fine or amercement for ſuch Nulance: ſee the former ſtatute of 1. E. 4. cap. 2. And

8. E. 4. 5. Tit. Torn. 4. yet by the Book of 8. Ed. 4. If a preſentment of a bloodſhed, &c. ſhall be lawfully made in the Sheriffs Torne, the Sheriff hath power to amerce him that is found guilty, and the offendor ſhall make his fine there (as it ſeemeth) and ſhall not be put to anſwer the ſame before the Juſtices of Peace, &c. Note, that this cale was ſo adjudged after the making of the former Stat. 1. 4. & quære inde.

Or elſe the King may have a Diſtringas, to levy ſuch a fine or Amercement, or the like, by Diſtrels and ſale of the Offendors goods. Finch. 125.

If a Purpreſture be preſented in the Sheriffs Torn, the Sheriff may reform and pull down the ſame: Cromp. 212. a.

21. Ja. 21. By the ſtat. made 21. Ja. c. 21. if any Inholder or Hoſteler ſhall make any horſebread contrary to the ſtatute, or which is not ſufficient, lawful, and of due aſſiſe, or ſhall ſell their provander or victuals at unreaſonable prices, and that the offence be preſented in the Sheriffs Torne, the Sheriff thereupon may determin the ſame, ſcz. may aſſeſſe a reaſonable fine upon the offendors, and may make out proces againſt them, and being taken may commit them to priſon, untill they have payd their ſaid fine.

And for the ſecond offence the Sheriff may impriſon the ſaid offendors, by the ſpace of one moneth, without bayl; And for the third offence may cauſe him to be ſet upon the Pillory, without any Redemption of money. Vide ſtat. 21. Ja. cap. 21. hic cap. 107.

Alſo by the ſtat. made 13. R. 2. cap. 8. Sheriffs, (and all others which have the Aſſiſe of Bread and Ale to keep, and the correction of the ſame) ſhall take no amerciament or fine, &c. but ſhall adjudge the offendors to that bodily puniſhment which the offence requireth (ſc. to the Pillory in ſome cales,) and ſhall do execution thereof upon preſentment of the offence. See hic cap. 4.

Alſo by the ſtat. made an 13. E. 1. c. 13. ſuch malefactors, in felony,

or trelpals as were duely indicted and found culpable in the Sheriffs Torne, the Sheriff might have apprehended and imprilloned them, &c. and the apprehending, arrelting, and imprilloning of Felons, being an authority given to the Sheriff by the Common Law, leemeth not to be reltrained, by the intent and meaning of the laid ltatute made 1. Ed. 4. Hic fol.

But for that it was found to be a great trouble for the people to travel to the Sheriffs Torne, Therefore Court Lætes were granted to redrels all manner of defaults there: And if the Læte redrelled them not, then thole defaults were to be prelented in the Sheriffs Torne. 12. H. 7. fol. 18.

And this Court (the Sheriffs Torne) is now almolt grown out of ule, the reason whereof W. Wilkenson obleryeth to be, That Sheriffs have uled to lell, both their Underlheriffwicks, and Bailiwicks, to men of mean eltate, that regard not the good of the Commonwealth, but altogether their own private gain and profit; whereby the King is many times much wronged and deceived (betwæn the Underlheriff, and Bailiffs) of all his Wayffs, Eltrayes, Felons goods, and other profits, which are things inquirable in the Sheriffs Torne, and which are taken up by the Bayliffs, and never accounted for, which thing as it may touch the lheriff in his credit and reputation, lo in his Oath: For when he entreth into his account for the payment of the Kings debts, he is then lworn to anlwer and account for all wayfs, ltrayes, felons goods, debts, perquilites and profits which leldom or never, either the King, nor yet the Highlheriff knows of, becaule thele ancient Courts are not kept as they ought to be.

Divers other reasons (as I conceive) may be given, why the Sheriffs Torne is now grown lo much out of ule:

1. Firlt, for that all (or the molt part of) the bulinels, or things inquirable in the Torne, or there to be dealt withall, are now ulually and frequently enquired of, prelented, heard and Determined by and before the Judges of Goale delivery, &c. in their Circuits; And alio before the Jultices of Peace at the Quarter Sellions; and again are prelented, and many of them punilhed, in the Court Lætts of every Lord, &c.

2. Nert, the lmall number of Suters now (at this day) compellable to appear at the Sheriffs Torne, by reason that there are almolt in every Town, one or moe Lætts granted by the Kings of this Realm, in which Lætts they do Enquire of, and redrels, the Common Nulances, Trelpalles, and Grievances, done within the Precincts of the lame Lætts, &c. And belides luch as before were Suters to the Sheriffs Torne, are now become Suters to the Læte where they dwell, in regard of their Reliancy, and then no man is compellable to appear at two Lætts, or Courts of one and the lame nature, and only for his Reliancy.

3. Thirdly, the trouble of the Country people, to travel from all parts of the Hundred, to the Sheriffs Torne; whereas now they perform the lame lervice, to the King and their Country, at home in their Læte.

4. Again, the trouble and charge of the Sheriffs, in keeping this Court, and making this their perambulations into every Hundred, and that twice in every year.

5. And again for that divers Rights, profits, and advantages; are now taken away from the Sheriffs, which anciently did belong unto them, or which anciently they at the leall had and enjoyed, by reason of the Torne, (whereof in part lee hic cap. 14. & 124.)

1. For the firlt true it is, that for the expedition of Jultice in the Country,

try, and for the eale of the People, theſe Judges, and Juſtices, and the Court Lætts, have had their beginnings and authority given them of later times: But withall we may obſerve in our dayly experience, that notwithſtanding the great care of the Reverend Judges, and Juſtices of Oyer and Termin. in their Circuits, and of the Juſtices of Peace in their Seſſions, as alſo of the Lords in the Lætts, for the diſcovery and redreſſing of the common grievances of the Country, yet for the moſt part they have little, ufually preſented before them, but Omnia bene, except where any particular perſon will and do prefer and follow the cauſe againſt the Offendors.

2. For the ſecond, true alſo it is, that at the ſpecial requeſts and ſute of divers Lords of Franchiſes, or of Mannours, and for the eale of their Tenants and Neighbours, Lætts have been granted by Kings, within ſeveral Precincts, to the intent to redreſſe all Nulances, treſpaſſes and grievances or other defaults there, which the Torne, was to enquire of and to redreſſe; and that the Sheriffs Torne, and the Lætte are all but as one Court, and that no man is compellable to appear, &c. at the two Courts, only for his Reſiancy; And that there are now in every Town almoſt, one or more Lætts, whereto all (or the moſt part of) the Inhabitants are become ſuters, ſo as there cannot now be ſo many ſuters to the Sheriffs Torne (by a great number) as anciently there have been: But withall we ſee many of theſe Lætts are now much neglected, and ſometimes not kept in many years together, in which cale ſuch as be Reſiant within ſuch Lætts, may be compelled to come to the Sheriffs Tornes, which ſhall be holden within that Hundred (where ſuch Lætte ought to have been kept) during ſuch times of neglect of the Lætte; And again where the Lætt of any Lord hath been, or ſhall be, ſeiſed into the Kings hands for any miſuſer, or other cauſe, all the people Reſiant within that Lætte ſo ſeiſed, ſhall now be compellable to appear, &c. at the Sheriffs Torne. Fitzh. 132. a.

3. For the trouble of the Country people, Surely if they duely performed their ſervice in this behalf at home in their Lætts, it were well, but that is by common experience found to be otherwiſe: And for their travel twice a year at the moſt, to the Sheriffs Torne being alwaies within the Hundred wherein they be dwelling, it is far leſſe labor or trouble to them, than their going to their Aſſiſes, or Seſſions of the Peace; And beſides, this their ſervice if it were well performed at the Sheriffs Torne, it would much eale, and expediate the buſineſſe of the Judges, and Juſtices, yea and of the Country people themſelves, at their Aſſiſes, and Seſſions of the peace.

But for the trouble and charge of the Sheriffs in keeping this their Court, as alſo for the profits thereof, which be now taken away from them, perhaps ſome Sheriffs may regard more their private gayn than the common good and weal of the Country, (which alſo is now grown to be the common cauſe almoſt in all other men, alwell Officers as others) But yet it cannot be denied, that of Reward and Puniſhment (as one ſaith) all Commonwealths do conſiſt, and that the care of Equity and Juſtice wared cold, unleſſe there be reward ready for virtue; And therefore though all Sheriffs be, or ought to be men of the beſt ſufficiency in their Country, and ſuch as need no reward for their care, diligence, travel, and charges, in that behalf, yet often times (now of late years) the charge and burthen thereof lyeth upon men of no great Eſtate, yea upon ſuch as find it overburthenſome to them in regard of the charge: And beſides, be they of the beſt and ableſt ſort, yet they muſt of Neceſſity imploy under them inferior Officers and Miniſters, &c. their Undersheriffs, and others, who with more chearfulneſſe and

care

care (yea and more honestly, and conscience) would (in all likelyhood) proceed in their affaires, when they shall find due recompence or reward yielded them for their travel and paynes.

And as it cannot be denied, but that the Sheriffs making and keeping orderly their Circuits, Courts, or Torne, through every Hundred within their Countries, twice every year, may not only themselves in their travel espy, and by their care enquire and learn out, but also may redresse many grievances, common wrongs and injuries committed or done within their County, which now never come to publick light; So on the other side it is evident, that not only divers profits and avayles which anciently were belonging to the Sheriffs (and yielded to them as a Recompence or Reward towards their great charges by them in this their office susteyned, as well in the Execution of this their Office, as upon their Accompts) are now taken away from them; But also that the charges of passing their Accounts, and their dangers otherwise, are grown so exceeding great, as that many, (yea of late most men) seek what they can, to avoid and keep themselves from the place.

CAP. 109.

The County Court, or Shire Court.

Incident al offic' del vic'.

The County Court (as well as the Sheriffs Torne) hath of ancient time been belonging to the Sheriff; And is incident and belonging to the Office of the Sheriff, and not to be severed nor granted away from it; nay the King by his letters patents cannot grant away the Office of the Clerk of the County Court, nor the fees, &c. thereto belonging; and if whilst the Office or place of the Sheriff remains void, the King (by his letters patents under the great seal) shall grant away the said Office of the Clerk of the Countie (or Shire Clerk of the County) or shall appoint any to occupie or use the same, yet when the King shall afterwards make one Sheriff, he shall avoid that grant. For that the County Court, and the entring of all the procedings therein, are incident to the Office of the Sheriff, and the Sheriff is to appoint such Clerks under him in his County Court for whom he will answer at his peril. Co. 4. 33. Co. L. 168.

Sir Edw. Coke super Litl. fol. 168. saith, that the Sheriff in the time of the Romans, and before, was a Minister to the Kings Court of Law and Justice, And had then a Court of his own, which was the County Court, then called Curia Consulatus, &c. And that That which we call Comitatum, the Romans more latinely called Consulatum. And that whom the Saxons afterwards called Shireve, the Romans called Consul, &c.

Now Comitatus est locus publicus in quo vicecomes uniuscujusq; provinciæ jurisdictionem suam exercet. Hoc autem nomen inde sumpsit Originem, quod apud majores nostros Nobiles illi quos Comites dicimus, istis Provinciis à Rege præficiebantur, & jurisdictionem in easdem Exercebant. Dr. Cow. Int.

The Book called Speculum Justiciar. libro 1. cap. 15. *des means Courts*, treating of the Sheriffs Court saith thus. *L'un Court tenent les viscounts de mois en mois, ou de Cinq; Semaynes in Cinque, selon les greindure & largess de pais; Et celles Courts sont appelle Countyes, ou les Judgements se font per les Suitors, Si breife ney soit, Et ceo est per garannt*

de

de Jurisdiction Ordinary. And a little after he saith, *En les quels Courts ont Conusaunz de Dets, Covenants, enfreints, & tresp[a]sses, & viels auters petits peches que ne pass[e]nt 40. s. in value.*

9.H.3. c.35. 2.E.6. c. 25. But now these County Courts (called also the Shire Courts) shall be holden and kept from moneth to moneth: And shall be no longer deferred, but one moneth from Court to Court, and so the said Courts are to be kept every moneth, upon a day certain, and none otherwise: And so within the twelve Shires of Wales, their Sheriffs shall keep their Counties monethly: And so within the County Palatine of Chester. 34.H.8. 26. 33. E. 8. cap. 13. *The Times.*

The necessity of keeping this Court every moneth, and upon a day certain, is by reason of the Kings Writs of exigents which must be proclaimed or read there.

Processe of Utlary, &c. the Exigent is to be directed to the Sheriff in this Court; And (in this County Court) the Sheriff (upon the Exigent) doth proclaim, or call the parties (sued in Courts above) to render their bodies, &c. Or else to be outlawed, and out of the Kings Protection, &c. *Terms de ley.*

And the Coroners are to sit with the Sheriff, at every County Court, there to give their Judgements upon Utlaryes, &c. (*nous appellons utlary, & serra pronounce (no Mr. ni donant tiel Judgement sur un utlary, suffit si soit done per un Coroner* Stamf. 53. c.) *Et ceo Judgement done en le 5. County per les Coroners, Mr. le vic. doit Retorne utlary ove le* Exigt, *&c. vide* Dyer. 223. & Finch. 116.

Note that in London the Judgement upon Utlaryes is given by the Recorder. Co. L. 288. 8.

Si un Exigt *soit agarde & retorne deins cye tardy tempt, que les Countyes ne potent estre tenus, sil soit utlage sur ceo, il est Error.*

Et quant le Roy voet estre certifye de utlagar. que est in le County, donq. Certiorare serra direct cybien al Coroners de County, coe al vic. de certifier ceo. Fitz. 245. 9. Finch. 116.

And as to these matters the county court is a court of Record. Finc. 116.

But the common Law these county courts may be kept or holden at any place, at the pleasure of the Sheriff, or Under-sheriff, so that it be within the County. And to this Court every man within the County may resort, to have knowledge of the Law, and to have justice there ministred to him. *The Plast.*

By the Sheriff of Northumberland (by the statute made Anno 2. E. 6. cap. 25. is to keep the county court of that Shire, in the Town or Castle of Alnewike, and none other place.

And the Sheriff of Sussex (by the statute made Anno 19. H.7. c.24.) is to keep and hold the Shire court for that shire, one time at Chichester, and the other time at the Borough of Lewes, and so to be kept Alternis vicibus, for ever: And every shire court there holden to the contrary, and all things therein done shall be void. Vide Dyer. 135. Pl. 14.

33.H.8.c.13. And the Sheriff of the County of Chester, is to keep his shire Court, in the Shire Hall of the said County.

27.H.8.c.26. And the Sheriffs Shire Courts in Wales, of the County of Brecknock, shall be holden at Brecknock: of Radnor at new Radnor, and Preston; of Mountgomery, at Mountgomery and Maghenleth; of Denbigh, at Wrixham; and of Monmouth, at Monmouth, and Newport; Alternis vicibus.

If the Sheriff shall give false judgement without the assent of the Suters, the party shall not have his Writ of false judgement, but must have his remedy against the Sheriff by bill, &c. Fitz. Bill. 12. 26. Ass. p. 45. N. br. 17.

The County Court is the Sheriffs Court, and the entry of all the pleas and proceedings there, are incident to the Office of the Sheriff, and cannot be granted or severed from the same; And the Sheriff is to appoint Clerks under him in this Court, such as he will answer for at his peril. Co. 4. 33. & 6. 11.

And note that every County or Shire is as it were an Entire body of it self, and entirely governed by one Sheriff under the King, and therefore to this county court all the inhabitants dwelling or abiding within the county or shire do owe suite by reason of their Resiancy there; And suite to this county court is called suite Real (and not suite service) and for default of this suite the party shall be Amerced, and not distrained, &c. Finch. 115. 116. & Fitz. 71. d. that it is the Kings Court.

And yet a man may hold Lands to do suite service to the county court, Fitz. 158. a.

But for that at the common law, the Sheriffs used to make Proclamations in the Church or markets, what day they would hold this their court, and if any suter came not at the day appointed, they would amerce him, &c. for to remedy this, the stat. of Merton. c. 10. first ordained that every Free man might make his Attorny to do suite at this court; and for the better redresse of this former mischief, presently after the stat. of Marlebr. cap. 18. ordained, that none should Amerce any man for default of common summons, but onely the chief Justices, Or the Justices in Eire in their circuits: so that at this day no suter shall be Amerced in the county court for default of appearance, if there be a sufficient Number to pass upon all the issues and matters before them depending; and it seemeth also that they ought to be specially warned (by the bayliffs) to appear, &c. otherwise they shall not be Averced. Lectur.

Nec aſcun ſerra Amercee ne diſtrēy d'eſtre d'aſcun Enqueſt, ſi la ſoient aſſets en meſme le pannel, &c.

The Officer in this county court, is one of the Bayliffs. Finch. 116.

Que Judge la. Also in these county courts (which are in manner as Court Barons) the Sheriff is no Judge, but a Minister. 6. E. 3. Br. Court Baron 11. 12. 19. Finch. 117.

Neither is the Steward judge there 39. H. 6. fol. 5. Br. Judges 15.

And yet in ancient times the Sheriff and Corroners have been, and still are judges in the county court, in pleas which touch the crown. Abr. d'Aſs. 68. Finch. 115. See hic cap. 4. & 3. As also in Exigents.

But (now at this day) as to all Actions and Proceedings by a Justicies, or Writ, As also in other suites between party and party, which are there by plaint without Writ, the Freeholders of the County or Suiters are Judges there: And as to Outlawries, the Corroners are only Judges, scz. the Corroners are onely Judges there to give Judgement upon the Kings Writs of exigents (sc. if the party cometh not in upon the 5. Proclamation (Or at the 5. County) then the Corroners shall give Judgement that he shall be out of the Kings Protection, &c.) and yet if they be Freeholders (as by Law they ought to be) they are also Judges in all actions there sued. See 6. E. 4. 3. 7. E. 4. 23. 39. H. 6. 5. & 26. aſſ. pl. 45. Br. Court Baron 11. 12. 19. & Justicies 3. 6. Co. 4. 32. & Co. 6. 11. Br. Judges 15. & Justicies. 6. Finch 117.

And although the suters be judges there, yet all the judgements there shall be pronounced by the Sheriff, upon actions or suites there: And see Co. libro 9. Preface. Those courts are called Counties where the judgements are given by the suters, if there be no Writ; so that where the suites in this court are by plaint without Writ, the freeholders or suters are to give judgement (sc. to find the party guilty, or not guilty, &c.) and the Sheriff is thereupon to pronounce the judgement; but yet if the suite be by Writ, there the suters also are judges, Finch. 117.

But

But Sheriffs ſhall not pronounce any judgement, nor ſuffer any to be pronounced in their County Court, unleſs they be thereunto required by all the Suters which ſhall be at the Court, ſtat. Weſtm. 1. Cap. 32. quære of the uſe herein.

Neither can the Sheriff (in their County Court) do any act without the aſſent of the Freeholders or Suters (for that it is but a Court Baron) and if the Sheriff ſhall do any thing there without the Suters, an action of the caſe lieth againſt the Sheriff, quære tamen.

Where a Writ de Nativo habendo, ſhall go to the Sheriff to hold a plea of a matter, there he is (by ſome opinions) both a Judge, and an Officer: but where the Nativo habendo is directed to him, returnable in
7. E. 4. 23. Banco, there the Sheriff is an Officer, and no Judge, 11. H. 4. Br. Offi. 36. but quære, For in a Juſticies the Writ is, quod Juſticies, T. &c. And notwithſtanding that the Writ be directed to the Sheriff (to hold plea of the matter) and not to the ſuters, yet the ſuters are Judges: And yet the Juſticies is a Commiſſion to the Sheriff to hold plea, as well as the Writ de Nativo habendo, Br. faux impriſonment. 30.

But the reaſon why the Writ is directed to the Sheriff, is, for that the
Co. 6. 11. County Court is the Sheriffs Court, and therefore great reaſon that the Writ ſhould be directed to him, to whom by Law the Court appertaineth; To the intent that he ſhould ſee two things performed there, ſcz. Firſt to hold his Court, that juſtice and right may therein be done to the parties; ſecondly, that he may be anſwered of thoſe profits of his Court which appertain unto him: but yet when he holdeth plea by force of the Kings Writ, this doth not change the nature, nor the juriſdiction of the Court; For the Kings Writ cannot alter the juriſdiction of any Court Baron, County Court, or hundred, &c. to make them Courts of Record, all which are mean, or baſe Courts by the Common Law, and have judges authoriſed and appointed in them by the Law, And therefore all things determined in theſe Courts ought to be determined by the Judges of the ſame Courts, ſc. by the ſuters onely.

Alſo ſee the book 2. H. 4. 24. That the Sheriff cannot juſtifie to arreſt or impriſon one by a Writ de Nativo habendo, or by a Juſticies, for thoſe Writs are but commiſſions to hold plea, and the Sheriffs Court by theſe Writs is not become a Court of Record. Br. Faux. impriſ. 30.

Weſtm. 1. 32. See Co. 8. 36. W. 27. By the ſtatute 3. Ed. 1. cap. 32. No Sheriff ſhall ſuffer any barre- *Barreters.* ters, nor any ſtewards of great Lords, nor other (unleſſe he be Atturny for his Lord, or Maſter,) to make ſute, or to maintain any Actions, or quarrels, Nor to give judgements in their County Courts; Nor to pronounce the judgements, if he be not ſpecially thereunto required, and prayed of all the ſuters, and Atturneys of the ſuters which ſhall be at Court: And if any do the King ſhall punish grievouſly both the Sheriff, and him that ſo doth. See hic antea fol.

Any perſon may make a general Atturney, to ſue for him to them in *Atturney.* all pleas, moved for them or againſt them, in the County Court before the Sheriff, or in any Court Baron, &c. See ſtat. 13. E. 1. c. 10. & Nat. bre. 19. 20.

11. H. 7. c. 15. Nota, *que al Common Ley* (*devant le ſtat. de* Gloc. 6. E. 1. cap. 8.) *le deffendt in action de treſpaſs ne puiſſoit aver fait Atturney de appeare pur luy, &c. le reaſon fuit, pur ceo que ſilz fuer convicts de treſpaſs, & fuer preſent, ilz fuer mayntent miſe al Gaole, tanque ilz ont fait fine al Ry, & gree al partye: mes ore pur ceo ſtat de* Gloc. *ilz poet fait Atturneys in caſes de treſpaſs, & ſilz ſoient atteynt de treſpaſs in lour abſence, ſoit mande al vic. un* Capias *de prender le party* (ſc. *le deff.*) ad faciendum

finem cum Rege; *Et donq; le vic. ne deliver eux, tanq; ilz ont fait fine al Roy, & gree al party*: Sed ſi ſoit preſent.

Auxi par le Common Ley (quant aſcun eſt command per bre le Roy de appeare, &c.) les partyes plt, & deff. tenant & demandt, al primer appearera in proper perſon in cheſcun Court, & nēy per Atturney; mz apres que il ad un foits app. les Courts le Roy al Weſtm. *& tonts auters Judges que tient plee per briefe, poet admitt luy per Atturney, autermt qt plea fuit temus ſans bre, &c.* Finch. 63. Co. l. 128.

Mz ore per le dit ſtat. de Weſtm. 2. cap. 10. *fait* Anno 13. E. 1. *eſt ordeyne que cheſcun perſon poet faire un general Atturny, de ſuer pur eux in tonts plees, mova pur, ou vers eux, &c. devant les Juſtices al* Weſtm, *ou in Bank le Roy, ou devant les Juſtices in lour Circuits, &c.*

Uncar in Cauſis Criminalibus *le perſonal apparance des partyes eſt requiſite pur le haynouſneſs del offence (come in Appeales de Murder, de Robbery, de Rape, ou de Mayhem) Et pur ceo in ceux caſes nul Atturny ſerra reſceive; Ne auxi in nul matter de Corone, ne in aſcun Indictment.* Vide *le dit ſtat. de* Gloc. cap. 8.

Auxi in aſcun plees queux ſont Civil, home ne poet faire Atturny, Come in quid Juris Clamat. in Ceſſavit, Capias ad Computandum, &c.

Auxi euſt ne poet faire Atturny, mz Gardian, ou prochein Amy. N. br. 20.

Auxi home village ne poet appear pur Atturny, come fuit tenus. M. 37. Eliz.

Mz le Roy poet Licens aſcun perſon a faire Atturny in aſcun action quicunq; Fitz. 25. c. & Finch. 63.

Auxi Nota, que bre de Atturnato fac. non datur p Statutum in viſu Franciplegii, Nec in Turno vicecomitis. Vide Regiſtr. 172.

Alſo it appeareth by the ſtat. of Weſtm 2. cap. 36. that Sheriffs in their County Courts, or their Officers, have formerly ſollicited and procured ſutes in their Courts againſt poor men, procuring other perſons to bring againſt them Writs, and Pleynts of account, Dett, Detinne, Treſpaſs, and the like, by which means they compelled the poor men to follow or reſort to their Counties, untill they made fines with the ſaid Sheriffs at their wills, for remedy whereof that ſtat. provideth, that if any Sheriff, bayliff, or other, be lawfully convict thereupon, they ſhall make a fine to the King, and beſides ſhall yield treble damages to the party grieved. ☞ *Et le dit ſtat. voet ouſter,* Si quis p hujuſmodi falſas quærimonias fuerit attachiatus, replegiet diſtrictionem ſuam ſic captam, Et poni faciat Loquelam coram Juſticiariis, &c. ſc. *quant un eſt attache in tiel manner, il avera un* Repl. *& remover le plee devant les Juſtices al* Weſtm, *hors del County Court; Et ſi le vic. ou bayliff, que attache le party in ceſt manner, vient & avowa le priſe per force d'un Pleint (ſue devant luy per un tiel envers le plt) de Dett, Detinue, ou treſpaſs, &c. (come le caſe eſt) donq; ceo ſtat. done al plt un Averment,* ſc. *adire que le pleint fuit move envers lui malitioſe per procurem & abettm del vic. ou auter deff. le quel il voet Averr, & preia ſes Damage; Et ſi ceo ſoit trove, le plt recovera ſes treble damages, & le deff. ouſter aler al priſon, & fera fuit al Roy, &c.*

Et nota, que cēy que eſt attache in tiel manner, poet aver un Repl. (ut ſupra) *Ou briefe de Treſpaſs, mz ſil prot briefe de Treſpaſs, la il recovera frq; ſingle damages, Et le deff. ne ſerra fines.*

Iſſint ſi le plt ne remove le plea hors del County Court, nient ob. que le deff. ſoit atteynt in le County, il navera le puniſhment done per ceo ſtat.

Mz ſi un vient al vic. &c. & dit que un tiel ad fait a lui treſpas, ou doit a luy un certein ſome de argent, & preia que il poet aver un pleint devant luy envers l'auter, Et le vic. &c. dit que ſil voet ſuer devant luy, il avera come le Ley voet, Et ſur ceo l'auter enter un pleynt devant luy envers ſon adverſary, ou detter, per force de quel le deff. eſt attacha; la ſil voet ſuer come

cēo

cẽo ſtat. voile, & la caſe mra, il recovera rien, Car ceo ſuit primerm̃t move per cẽy, que ſuiſt; Et le ſtat. ne par le mꝛ lon le pleint fuit move primerm̃t per procurm̃t del vic. &c. Vide 41. E. 3. Fitz. Avowry, 78. & 9. E. 4. fol. 23.

Again it appeareth by the ſtat. 11. H. 7. cap. 15. that afterwards Sheriffs or their Officers in their county court, did often practiſe divers other miſdemeanours, by entring Pleynts there ſubtily and untruely (of Dett, Covenant, Treſpas, and the like) unknowing to the plts (or perſons in whoſe names the ſame pleints were entred, yea ſometimes the ſame perſons bieng dead) and only to the intent to extort from the defendants money at every of the ſaid Courts (depending the ſaid plaints) for their defaults of appearance there, and where the Deft. were never ſummoned nor warned to the ſaid Courts, nor ever had knowledge of any ſuch ſute or pleynt depending againſt them; and alſo by uſing other notable extortions; For remedy whereof the ſaid ſtat. of xj. H. 7. hath provided as followeth.

11. H. 7. c. 15. *Plaints entred there.* The Sheriff, Underſheriff, or Shire Clerk, nor any other perſon in their name, nor by their commandment, ſhall entr any plaints into their books, (in their County Court) in any mans name, unleſſe the party Plaintiff be in his proper perſon preſent in the Court; Or elſe by ſufficient Atturny or Deputie that is known to be of good name and diſpoſition; And the Plaintiff ſhall find pledges to purſue his plaint, ſuch perſons are known in that County: And alſo the plaintiff ſhall have but one plaint for one treſpaſſe, contract, or cauſe: And if the Sheriff (Underſheriff, or Shire Clerk) ſhall enter or cauſe to be entred any moe plaints than the Plaintiff ſuppoſeth that he hath cauſe of action for againſt the Defendant, then the Sheriff, Underſheriff, or Clerk, that doth enter or cauſe to be entred any ſuch plaints contrarie to this ſtatute, ſhall forfeit for every default forty ſhillings, one half to the King, the other half to him that will ſue and prove the ſame, by action of debt, or information, &c. *Plegii de proſequendo.*

Ibid. *Precepts to warn the defendants.* After ſuch plaints entred (in the County Court) againſt the Defendant, the Sheriff (Underſheriff, or Shire Clerk) ſhall make ſufficient Precepts, directed to the Bayliffs of the ſaid Hundred, to attach (ſummon or warn) the Defendant to appear and anſwer to the ſaid plaints; And if there ſhall be any default in the ſaid Bayliffs of the Hundred, in not warning of the Defendant to appear, or in other executing of their ſaid office (againſt any Defendant in the Sheriffs Court, according to the tenor of their Precept) then the ſaid Bayliffs ſhall forfeit for every default forty ſhillings to the King, and to be convicted thereof by the examination of any Juſtice of Peace, upon complaint thereof to them made by the party grieved; Or elſe the party grieved may ſue in the Exchequer, &c. by Action of Debt, or Information, and there for every ſuch default proved againſt the Sheriff, &c. the ſaid Sheriff or other Officer ſhall forfeit forty ſhillings, the one half to the King, the other half to the party grieved. *Defaults in the Bayliffs.*

Ibid. *Eſtreats for the Shire amerciaments.* Alſo the ſaid Sheriff (Underſheriff, Shire Clerk, nor their Deputies) ſhall make no Eſtreats to levy the ſaid Sheriffs amerciaments (or Shire amerciaments) until that two Juſtices of Peace (whereof one to be of the Quorum) have had the overſight of their Books, and that the Eſtreats be indented between the ſaid Juſtices of Peace and the ſaid Sheriff and Underſheriff, and ſealed with their ſeals; the one part to remain with the ſaid Juſtices, and the other part with the Sheriff or Underſheriff, to the intent they may underſtand, if there be any deceit or untrue demeaning in them, in making of their Books. *Viewed, and ſealed by two Juſtices of Peace.*

Alſo

The Bayliffs ſhall be ſworn.

Alſo thoſe perſons which ſhall be gatherers of the ſame amercements (as Bayliffs or other Officers) ſhall be ſworn by the ſaid Juſtices of Peace, that they ſhall gather or take no more money than is forfeited, and contained in the Eſtreats, ſealed with the ſeals of the ſaid Juſtices of Peace upon the pain aforeſaid; the ſame gatherers to be convict by examination of the ſaid Juſtices of Peace, or one of them, as before is rehearſed: ſee my Countrey Juſtice, tit' Sheriffs. Ibid.

CAP. 110.

Of what matters or cauſes, the Sheriff may hold Plea in his County Court..

Sciendum eſt quod omnia placita, ſunt vel Placit.
- Realia, ſc. de terris, &c. *in que home recovera aſcun realty.* Litt. 500. & 492.
- Perſonalia, ſc. de Debitis, tranſgreſſionibus, & *tiels; de ceux* tantum *le vic. tener plea, per plaint.*
- Mixta, quæ utramque tangunt naturam; *ſicome Aſſiſe, & action de Waſt.* Litt. 491.

Actions Reals ſont deux.
- *Poſſeſſory.*
- *Anncestrei.*

Placita perſonalia ſont de 3. ſorts.
- Tranſgreſſio facta contra Coronam Regiam; Et hæc tangit vitam, vel membrum.
- Tranſgreſſio facta contra pacem Regiam; ſicut de verberatione, de clauſo fracto, de arboribus ſuccisis, de bonis aſportatis, & ſimilibus.
- Aut eſt de injuſta Detentione Catallorum, replegiare, de debitis, & de ſimilibus.

Plees perſonals poet auxi eſtre devide en deux ſorts;

Lun eſt meere perſonal plea, inque nul ad intereſt mes meſme les parties (ſc. le plt & le deff.) ſicome actions de Dett, Detinue, &c.

Lauter eſt mixt en le Corone; ſc. lon le plt, & le deff. n'ont ſole intereſt in l'action, Mes le Roy ad intereſt in ceo auxi, pur aver fine; Come in action de Treſpaſs quare vi & armis, &c. *ceo eſt action mixt, &c. Et de tielz le vic. ne doit tener plea, &c.*

Auxi tots Offences poet eſtre devide in deux ſorts
- *Private.*
- *Publique.*

Private Offences ſont tiels que ſont fait per un home al dammage del auter; Et ceux ſont remedy per Original briefe, Bill, ou pleint.

Publique Offences, ſont tielz queux ſont committ vers le Roy, & le Commonweale; & ceux ſont remedy per voy de Indictment, ou Information; Et ceux ſont inquir. per le vic. in ſon Torne, mes ne medler ove ceux in County.

Mr. Selden ſheweth, that in the time of the Saxons, moſt ſuits in the Secular or Common Law, were Miſcountiel, and held before the Sheriff in the County Court. Seld. pag. 412.

Alſo he ſaith, that in thoſe ancient times, a Juriſdiction of cauſes Eccle-

Eccleſiaſtick was alſo exerciſed (ioyntly by the Biſhop of the Dioces, and by the Sheriff of the County) at the County Court, where the Biſhop and the ſheriff both ſate, the one to Iudge according to the Laws of the Kingdom, and the other to direct according to Divinity. Ibm.

But at the Norman conqueſt, the holding of Eccleſiaſtick pleas in the County Court was taken away. Ibm & pag. 413. 414.

Nota quod Placita de Latrociniis, de Melletis vel Medletis, de Hutesio, de plagis & Appellis (que ſunt Contra Coronã Regiã) Coram Coronatoribus & Vicecomite incipere poſſunt in Curia Comitatus; Sed ad præſens, licet olim, ibi non poſſunt determinari, Artic' ad nov. Narr. 77. vide plus Bracton libro 3. cap. 35. & Radulphus de Henghã, Capit. Juſtic. tempe Regis Ed. 1. Plaints there.

Sed parva brevia de Nocumento, & alia vicecomitabilia; & placita de verberatione, & alia quacunque tranſgreſſione, ubi periculum mortis, vel membri, non evenit, & ubi quæritur tranſgreſſionem non eſſe perpetratam contra pacem Regiam; ac placita Debiti, & Detentionis, ſub ſumma quadraginta ſolidorum, ad vicecomitem (& ad alias Curias inferiores) pertinent Audiendum, & Terminannum. *Ibid.* Nuſance. Treſpaſs. Debts. Detinue.

Ac etiam in quibuſdam Caſibus, Coram Vicecomite, placita terræ poſſunt placitari; Quemadmodum ſi quis deficit de Recto in Curia alicujus Baronis, in breve de Recto in tali Curia portato, Ea de Cauſa falſare poterit Curiam illam, & per idem breve placitare in comitatu, Quia illud breve in ſe hoc requirit, cum dicat, Et niſi fecerit, vicecomes noſter Cantebr. faciat, ne amplius inde clam audiamus pro defectu recti, &c. *Ibid.* & Rad. de Hengham.

Appeales de Robbery & de autr. felonyes, Mayhem, & Rape, poet eſtre ſue in le County Court, per bill, devant le vic. aſcun un des Coroners. Stamf. 52. 55. a. 62. 64. 67. & Finch 115. 116. & ſtat. Weſtm. 1. cap. 10. & *Terms del Ley.*

Mz ſur Appeale ſue la 21. Sueriyes de proſequendo ſerra primz trove al vic. Stamf. 64. a. & Britton fol. Finch. 5. 115.

Le proceedings in tielz appeals, eſt cõe in Appeales in Bank le Roy, ſc. Capias, & Exigent, &c. Finch. 113. vide Stamf. 64. a.

Mz, divers ont tenus, que ſur Appeale commence icy, comment que le vic. & Coroners pot agard Proces avers le Appellees, &c. uncar ſilz appeare que ilz ne poyent mitter L'appelees a reſponder, Mz. ſolomt ex garder in priſon, & hoc per reaſon del ſtat. de Mag. Chart. 17. *ql veyes* hic antea, cap. 4. Stamf. 64.

Auxi le viſcount one le Coroner ad power de prender le Appeale de Approver ſc. *de felony fait in aſcun County D'engliter.* Stamf. 52. b. d.

Sr Appeales de felony, &c. devant le vic. & Coroner, le vic. & Coroners doiet Irrotulare ceo ſc. *Annum, diem, & locum, & tots les parolz del appeale, & les noſmes des pledget de proſequendo, & auters Circumſtances, & certifier ceo al Juſtices.*

Mz quant al plees de Latrociniis (ſeu furtis) dicitur que ceo parol ne intend de furto que fuit Capital, Mz tantum de tortions priſel d'aſcun biens, ſicõe le dit ſtatt. de Weſtm. 1. cap. 36. *parle.*

Auxi dicitur que ceo parol Melletis (ſuiſdit) als Medletis, fuit uſe pur ſudden Affrayes. Et que le parol Hutesio, *ne fuit priſe icy per Hue & Crye, Mz potius per ſcoldings ou brawlings per que le peace del pais fuit diſturbe, de ceo parol* Hutin.

Nota quant al cenx matters de Appeale, & al Judgments done in ceo County Court ſur Exigis (ut hic antea,) le County Court eſt Court de Record; Car Certiorare giſt al Coroners a certifier le Record del Utlary (uncar quere car le vic. ad le cuſtody de cel Record Dyer. 223. & Finch. 116.)

Auxi

Auxi Capias & Exigent giſt in Appeale per bill ſuiety, ut ſupra: *Et ſemble que br. de Error giſt (& nõy faux Judgement,) ſur Error en l'appell.* Finch. 116.

But Mr. Bracton, libro 3. fol. 154. ſheweth, that in his time, in a ſute commenced in the County Court, the Plt. ought not to complain de pace Dñi Regis fracta; which well agreeth with, and explains the Law as now it is uſed, ſc. that the Sheriff cannot hold plea of Treſpaſſes Contra pacem Dñi Regis.

And yet at this day Sheriffs in their County Courts (beſore themſelves onely, without the Cozoners) by way of Plaint, without any Writ to them directed, may hold Plea of, and may examine, hear, and determin certain ſmaller perſonal actions, as of Debts due upon contracts, &c. Detinue of Chattels, Aſſumpſit, Covenant, Nuſances, taking of cattel, and detaining of them, oz Replevying of beaſts, Treſpaſſes, and the like, dapning, mayd, oz done, within their County, and where the Debt oz Damage is under 40. s. and the Plea determinable by wager of Law; And all this (except in a Replevin) the Sheriff may do by the common Law. Finch. 116.

But the Sheriff can not by way of Plaint, without Writ, hold plea in a Replevin, by the common law, Dyer. 246. Finch, 116.

Neither can the Sheriff by way of Plaint hold Plea in an Accompt, although the ſumme be under 40. s. Finch. 116. Fitz. Accompt 29. (the reaſon is, foz that the Sheriff hath no authozity to aſſign Auditoꝛs.) And yet Fitz. 117. b. that if one entreth into my Land to my uſe, and receiveth the pzofits thereof, &c. I may have an Action of Accompt foz this in the County; *Mz ceo ſemble deſtre per br. de Juſticies, & nõy per Pleynt.* Alſo at this day the Sheriff may make Replevins, and may in his County Court hold Plea thereof, by Plaint (without Writ) and may there determin the ſame, ſo that the damage exceeds not the ſumme of 40. s. And this they now may do by force of the ſtat. of Marlebr. cap. 21. & Weſtm. 2. cap. 2. ſee more hereof hic poſtea. But if the damages be above 40. s. it ſeemeth the Sheriff muſt then hold Plea by a Juſticies, and not by Pleint. quære.

Alſo concerning theſe former Actions of Debt, Detinue, Aſſumpſit, Covenant, and Treſpaſs, &c. if the Debt oz Damage be above 40. s. then they are not to be ſued in the County Court, but by a Juſticies.

Neither can they hold plea in their County Court, of any Debt due by, oz upon Recozd in any Court of Recozd; (But otherwiſe it is of Debt upon Recozd in the ſame Court.) Noz Debt due upon bond, &c.

Alſo in an action of Treſpaſſe there holden, no force ſhall be ſuppoſed, foz then a Superſedeas lieth. Fitz. 299. d. Finch. 116.

Neither can they hold plea in their County Court, of any Diſceit, Maintenance, oz forger of falſe Deeds.

Neither can they hold plea of Detinue of Chzes concerning freehold. Fitz. 138.

Neither can they hold plea of any freehold, by Plaint, noz where the freehold cometh in queſtion (but by a Juſticies) *Mz ſi Judgement ſoit la done de Franktenement ſur un pleynt*, dicitur *que il eſt boy, tanque il ſoit reverſe per br. de faux judgement.* ſed quære *de ceo*, *Car quant al Real actions in queux terr ſerra demand, ile vic. ne competent judge, Et ſon proceedings in tielz caſes* eſt Coram non judice.

Auxi ſi aſcun plea touchant Franktenement viet en debate in aſcun action perſonal, le County Court eſt miſe hors del juriſdiction, & le party eſt miſe de ſuer al Common Ley.

Iſſint ſerra bon forrein (& faux) plea eſt pleade, (cõe performãz del Con-

Condicion al London, *ſi ſoit ſur obligacion, &c. Ou auter forein plea.) Mz ſemble reaſonable a denyer eux de iſſint pleader, Mz de forcer le deff. de Gager lour Ley; Car auterment les Deff. pot per tiel lor fx pleas, ouſter le vic. de juriſdiction, Et faire tots Suits in le County Court d'eſtre de petite effect.*

Sĩ le Vic. voile tener plea in ſon County, Ou de perſonal choſes ouſter 40 s. Ou de Real choſes, ſanz breide juſticies, le party poet Eſlier d'aver br. de fx. judgement; Ou auterment poet diſobey tont que ſerra iſſt. fait cõe choſe voide, & fait Coram non Judice.

Vide plus hic. Cap. 113.

Et Nota coment les Viſcounts en lour County Courts avera Coniſanz de tots plees queux ſont deſouth 40 s. (cõe eſt avant dit,) & queux ſont determinable per ley Gager, uncar ceux petite plees fuer anxi (al Common Ley) determinable in Court le Roy, tanque le ſtat. de Gloc. Cap. 8. *que ceo reſtreyn per le Eaſe del people, Et de ſuperior judges & Courts, queux ſont ſuffir, tröble eux greindour affairs: Et per le melior aſſurãz de ceo, le dit ſtat. de* Gloc. *voet que le Plt. affirme per ſa foy, que les biẽz priſes, ou les Damages, vailont 40 s. al meins (ſc. in ſuitz dewt les juſtices,) Mz ceo Serement neſt ore in uſe, & ceo per l'advantage le Roy (come ſemble) cybien in actions de treſpaſs, come del Det.*

Glocester 8. By the ſtat. made 6. E. 1. c. 8. Sheriffs ſhall hold pleas of treſpaſs in their counties, as they have accuſtomed; ſc. where the damages do not amount to the value of 40 s. Mz that the Plea be not laid to be vi & Armis; foz this ſtat. herein is a confirmation of the Common law before.

And by the ſtatutes of 27. H. 8. c. 26. & 34. H. 8. c. 26. the ſheriffs of the Counties of Wales, ſhall hold plea of Replegiare, and all other ſutes, and plaints, under forty ſhillings, in their County oz ſhire Courts, in like manner, as all other ſheriffs do within the Realm of England.

Finch. 116. N. br. 48. But this County Court cannot hold plea, where the debt oz dammages is forty ſhillings oz above, unleſs it be by a Wzit of Juſticies, (out of the Chancery) which the plaintiff may pzocure if he will, to be directed to the ſheriff: And that Wzit of Juſticies is a Commiſſion to the ſheriff to hold plea of any ſum whatſoever, as well above 40 s. as under that ſum; Neither is this Wzit of Juſticies retozнable, but ſhall be determined before the Sheriff in his County Court. *Juſticies.*

CAP. 111.

IN *Courts le Roy tots ſuits per enter party & party commence per breif Original, mz in le County Court (cõe anxi in auter inferior Courts) ilz commence per Pleynt; ſc. Cĕy que voile ſuer un auter icy, il poet aler al Seneſchal, ou Officer de meſme Court (en que il purpoſe de ſuer) Et Enter ſon pleynt la, accordt al nature de ſon Caſe; Ou auterment il poet ceo faire in plein Court devant le vic. ou Seneſchal, &c. 9. E. 4. fol. 48. que cel Entreedel pleynt poet eſtre devant le vic. en ſon meaſon, ou al aſcun auter Liew deins le County; mz potius devant luy in plein Court: Et accordt a cel darein eſt le liver. 21. E. 4. que doit eſtre in plein Court,* Et Sedente Curia.

But no ſheriff ſhall enter any Pleint in his County court, Except that the Plt. be preſent in perſon, oz by an Atturny oz Depuſy known to be of good name, and that he find perſons known, to be Pledges de

proſequendo; and he muſt have but one Pleynt for one Treſpaſs or Contract. 11.H.7.cap.15.

Le plt apres ſon Pleynt iſſint Enter, doit procure le Proces del Court, ſc. (in Caſes de Dett, Detinne, & Covent) un Summons, per que le bayliff ſerra command de Summoner le deff. d'appear al prochein Court, de reſponder al plt en ſon dit Pleynt, &c. Et le vic' doit faire ſuffic' warrant precept ou proces a ſon bayliff de Summoner ou Attacher le deffs accords ſub pœna 40 s.

Al prochein Court le Seneſchall cauſer les parties d'eſtre call, primz le plt, & apres le deff. Et ſi le plt appeare, & le deff. fait defaults d'apparanz ſur le ſummons, & que le ſummons ſoit Retorne per le Bayliffe, donq; anter Proces iſſera vers le deff. ſc. *Attachment, &c.* Vide hic poſtea.

And in this County Court the actions muſt be called, as they are in a Hundred Court, or in a Court Baron.

Stile of the Court. Cantebr. ſſ. Prima com A. B. militis vicecom comitat' præd. (and ſo the next Court, Seconda com A. B. &c.) tent' apud caſtrum Cantebridgiæ, tali die & anno, &c. ſetting down the Kings ſtile at large.

Then the Bailiff muſt make an Oyes, and ſay thus, (three times before the Court) Eſſoins and Proffers *pur cẽ jour*: And then he muſt ſay, If any man will be eſſoined, or enter any plaints, let them come in and they ſhall be heard.

Eſſoine eſt excuſation de default ou abſence de party, ſc. in Caſes lon action eſt port, & le plt ou deff. ne poet bien appeare in Court al jour, &c. donque il poet eſtre Eſſoine ou excuſe (pur les cauſes hic apres expreſs) de ſaver ſon default. Et ceo poet eſtre auxi bien pur le plt ou demandt, come pur le tenant ou deff. Spec. Juſtic. libro 2. cap. 20. Co. L. 128.

Le droit de cheſcun Eſſoine eſt que le cauſe de le abſence ſoit Inroll avec le Nome del Eſſoin or, iſſt que ſi le party adverſe ou ſon Attorne voile traverſer le Cauſe, a ceo eſt reſceiveable; & ſil ſoit trove faux, adonq; le Eſſoine eſt turnable en un default. ibm.

Unear Eſſoine de Malo veniendi (*que eſt le Common Eſſoine,*) *cemt que ceo ſoit fait fauxemu, nul remedy eſt done pur ceo, car eſt frq; petite delay, & ideo le plus ſuffre.* ibm.

Delayes. *Et Nota, que le tent ou deff. poet eſtre Eſſoine, pene, in cheſcun Original bre devant apparance, ove cauſe, ou ſanz cauſe; per que grand delay enſua al plt.*

Et aſcun foitz le deffs poet eſtre Eſſoine apres un Eſſoine; Come in un Real acco' vers t. pur vie, al retour del Original le t. eſtre Eſſoine, le ddt doit adjourne come, on. 9. common jours del Retour ſerra done (per que di Ann eſtre ſpent;) Et al jour del Eſſoine, let. voet dd le view, & donq; 9. auter jours de retourne ſerra done. Et al jour del view le tent poet eſtre Eſſoine, Et donq; preya Ayde de cẽy in revercion; Et al jour del retourn del Sum. le Preie in Aide voet eſtre Eſſoine, & la auter 9. jours de common retour ſerra, &c.

Eſſoin. If any man will be eſſoined, it may be entred as the caſe ſhall require, ſcz.

I. S. eſſoin eſt { quia in ſervic' domini regis. *icy l'eſſoinor ſerra jurus.* / quia eſt ultra mare. *per ceo le deff. avera. 40 jours.* / quia non potuit venire propter altitudinem aquæ. / quia eſt de malo lecti. Or / quia ægrotus, vel ſimilia.

There be other manner of eſſoins which are in plea, the one after ſummons or attachment, and the other after iſſue ſoined, which are to be entred after this manner.

1. I. S.

1. *I.S.* Qui ſummoñ fuit (vel attach' fuit) eſſendi hic, ad hanc Curiam, ad reſpondend *T.K.* de placito debiti (vel ſimilia) modo eſſoñ eſt per *D.R.* &c.

2. *I.S.* Qui habuit diem uſque ad hanc Curiam ad exitum jun' inter *T.K.* quærent' & *I.W.* defend modo Eſſoñ eſt per *D.R.* &c.

And in like manner the Plaintiff may be eſſoined if he will.

And if the one partie be eſſoined at one Court, the other partie may be eſſoined at the next Court.

Whoſoeber will caſt any eſſoine, he muſt come at the beginning of the Court, when proclamation is made, or elſe he ought not to be receibed. See Statute de Eſſoines 12. E. 2.

But note, that the party cannot be eſſoined in theſe caſes following, ſcz.

If the party himſelf be ſeen in Court. Statut. de Eſſ. 12. E. 2. Dyer. 268.

If the party have an Atturny (in the ſame plee) preſent in Court; Except they be both eſſoined.

If the party made default at the laſt Court before.

Or if the party come in by Cepi corpus, or Diſtreſs.

Speculum Juſtic. l. 2. c. 10.

Auxi in ceux caſes ſubſequents home ne ſerra Eſſoine. ſc.

Nul apres Apparance (*in certen actions*) Vide ſtat. 3. E. 1. 41. & 13. E. 1. cap. 28. *Et ceux ſtats expound* Abr. d' aſſ. fol. 91. 92. & Finch. 64.

Nec in Admeaſurmt de paſtur.

Nec in Dower. Stat. de Eſſoin.

Nec in Recordare fac' Loquelam.

Nec in Replevin, per l'infinite delay.

Nec in Scire facias. *Nec in* Venire facias.

Nec aprs jour done per prece partium. 13. E. 1. cap. 27.

Nec apres Eſſoine nient garrt.

Nec ou le plt n' ad trove ſuerty a purſuer. Stat. de Eſſ.

Nec quant le jour n' eſt venue; Ou eſt paſt. Stat. de Eſſ.

Nec Ou nul Summons eſt temmoigne. Stat. de Eſſ.

Nec celuy que ne fuit nome en le bre. Stat. de Eſſ.

Ne nul que adverſary eſt mort.

Nec celuy que eſt adjorne de jour en jour.

Apres iſſue joyne, frq; un Eſſoine ſerra allow. 52. H. 3. 13. 13. E. 1. 27. *mz. ceo ſerra intend del Common Eſſoine, Et auxi* tantum *del deff.* Dyer. 224.

Auxi ceux perſons deſouths nomes ne ſerra Eſſoinors, ſc. *Enfant deins age; Ne femes, Ne ſerfs. Nec perſons Excommengas; Ne partyes in m. plee; Nec atteynts de fx delay; Nec Eſſonours auterfoits nient garrt.*

Vide plus de Eſſoines. Bracton lib. 5. fol. 335. &c.

Note alſo, that none ſhall need to ſwear to warrant his eſſoine. 52. H. 3. ca. 19. *Mz dicitur que ceo eſt intend de Common Eſſoin* (ſc. de Malo veniendi) *& de nul auter; & que devant ceo ſtat. ſi aſcun ad jecte Eſſoine per auter, il doit faire Seremt que cēy que il ad Eſſoine fuit malade, &c. iſſint que ne poet vener.*

Apres les Eſſoines ſont lay & allow, donq; ilz proceeder a les Plees. Et prinz le plt ſerra demand & call, (que doit eſtre priſt al Cheſcun Court pendt ſon plea;) Car ſi le plt ne ſoit priſt de purſuer ſon ſuite & Pleint, & de reſponder quant il eſt demand, le Court doit agard luy come Nonſuit en ſon pleynt, Et le plt meſme, & ſes Pledges d'ſtre amerce, Et le deff. ira ſanz jour.

Si le plt ſoit priſt, donq; le bayliffe ſerra demand ſi le deff. ſoit Sommon ou nēy; Et le bayliffe eſt de faire ſon Retorne quid il ad fait in ceo, &c.

Mz nota, que le plt, on deff. poet appeare per lour Atturnyes.

Si le deff.ne appeare, donque la iſſera vers le deff. un Attachmt, & apres Diſtringas, *& apres un* Alias, & Pluties Diſtr: *Et ſic Proces per Diſtreſs infinite ſerra fait & iſſera vers le deff. tanq; que il appere.*

Et quant ambideux les parties appeare en Court, donq; le plt doit mitter eins ſon Declaration, monſtrans in ceo ſon grievance vers le deff. &c.

Mz primz. concernt les Proces de ceo Court, Et apres ſerra dit les auter proceedings la.

Proces.

Proces. FIrſt, the like Pzocels oz Pzecepts as are made out of the Hundzed Court oz Court Baron, are to be made out of the County Court mutatis mutandis, viz. a Summons, Attachment, and Diſtreſſe infinite, which alſo is the Pzoces at the Common Law; and theſe are to be made in the ſheriffs name, and to be directed to his bayliffs. 34.H.6.49. fi.116.117.

In the Juſticies oz Ficountiel Wzits, the Pzoces is a ſummons by the deffs gwds, an Attachment, and Diſtreſs infinite; Mz if upon the ſummons a Nihil be returned, then a continual Capias. Finch.352.

And note, that a Pzecept oz commandment by parol only in a Court Baron is gwd enough, without any pzecept in wziting. 16.H.7. Br. Proces.184. Finch.248.

The forms of theſe Precepts are as followeth.

A Summons.

Summons. PRæceptum eſt ballivo ibid. quod ſum̃ fac' *C.D.* quod ſit hic ad prox. cur̃ ad reſpond. *A.B.* in pl̃ito debiti (oz detentionis, conventionis, vel ſimilia.) Teſte, &c. *Cantebr.*

Alias. *R.S.* armiger vicecomes comitat. prædict. ballivo hundred. de R. ſalutem. Quia *I.S.* ad com̃ meum tent' pro comit. prædict') queritur verſus *I.D.* in placito debiti triginta ſolidorum (vel in placit' tranſgr̃, vel in placito detentionis, &c. *ſicome le pleint eſt*) Et invenit plegios de proſequendo, &c. * Ideo tibi præcipio, qd. ſumm̃ fac' præf. *I.D.* q̃ ſit hic ad p̃x. Comitatum meum tent' apud C. ad reſpond' præf. *I.S.* in pl̃ito præd. Et habeas ibi hoc præceptum, & qualiter, &c. datum 8. die Auguſt. ann̄ regni dn̄i noſtri, &c.

Al prochein Court apres le Summons fait, le Seneſcall cauſer les partyes d'eſtre call, prinz le plt, & apres le deff. Et ſi le plt appeare, & le deffendt fait defaulte d'apparance, & que le Summons ſoit Retorne per le bayliff donq; auter proces iſſera vers le deff. ſc. Attachemt, &c.

Nota, *que le primer Original Proces, in plees de Dett, Detinne de Chattells, Covenant, & totes antres perſonal actions, eſt un Summons, & apres Attachment, & apres Diſtreſs infinite iſſera; Sinon in plea de Treſpaſs, in que Attachmt giſt en le primer Original, & apres Diſtreſs infinite.* Hic cap. 31.

Et tiel Attachmt & Diſtreſs ſerra execute in meſme le forme, cybien en Pleytns de Dett, come de Treſpaſs.

An Attachment.

Cantebr. PRæceptum eſt ballivo ibm̃ q̃ attachiat' *C.D.* per omnia bona & cattall' ſua, q̃ ſit ad p̃x. Comitatum meum, ad reſpond' *A.B.* de placito debiti, &c. vel tranſgreſſionis.

Dz

Or this attachment may be made more amply as before (almost word for word usq; at not' *) Ideo tibi præcipio q attachias præf. *I. D.* per omnia bona & catall' ſua, q ſit hic ad px. Comitatum meum, &c. ut ſupra. *Alias.*

Alſo the defendant may be attached by pledges, &c. See plus hic cap. 52.——And the Attachment may be thus.

R.S. armig' vic' com̃ præd. ballivo, &c. ſalutem. Pone per vadios & ſalvos plegios *C. D.* quod ſit hic ad proxim Comitatum meum apud *C.* die Jovis, &c. ad reſpond. *I.S.* de placito Debiti, &c.

Upon a præcept of Attachment in the County Court, the Officer muſt not attach the Deff. by his perſon or body, but by his horſe, ore, pot, pan, &c. cap. 32. & 52.

And the goods or chattels whereby the Deff. is ſo Attached, the Bayliff ſhall kæp in his own poſſeſſion untill the next County Court; Except the Deff. do replevy the ſame goods ſo attached by two Pledges diſtreynable within the County and Juriſdiction of that Court; which Pledges ſhall become ſuertyes that the Deff. ſhall appear at the next Court to anſwer to the Plt in his Pleynt.

But if the Deff. do not by Pledges replevy the ſaid goods ſo Attached, and that the deff. maketh default at the next Court (or at the day given him by the Attachment) the Court ſhall award the goods ſo Attached, to be forfeited (and ſhall kæp the ſame goods as forfeited, &c.) And beſides the Court ſhall award that the Deff. be Diſtreyned by other of his goods, to be at the next Court after, to anſwer, &c. And thereupon an Entrée ſhall be made in the Court Book (or Roll) in manner following.

I.S. opp. ſe verſus *C.D.* de pl'ito debiti, &c. Et ipſe non venit. Ideo ballivo mandatum fuit quod Attachiat præfatum *C. D.* Qui quidem ballivus retornavit quod attach. unum equum preci v s. & non venit. Ideo ipſe in miam. Et præceptum eſt quod prædictus *C. D.* diſtringatur quod ſit hic ad px. comit' meum, &c. ad reſpond præfato *I.S.* de pl'ito prædicto.

And if the Deff. do Replevy the goods Attached, by two Pledges (as aforeſaid) and then maketh default (ſc. appeareth not) the Court ſhall then award the ſaid Deff. as alſo his Pledges, to be amerced, and ſhall amerce them; And beſides the Court ſhall award that the Deff. be diſtreyned againſt another day; and then the Entrée ſhall be thus.

I.S. opp. ſe verſus *C.D.* &c. Et ipſe non venit. Et ballivus retornavit quod Attachiatus eſt per Pleg. *E. F.* & *G. H.* Ideo in miam. Et mandatum eſt quod prædictus *C. D.* diſtringatur quod ſit, &c. (ut ſupra.

A Diſtringas.

PRæceptum eſt ballivo ibid. q diſtringat *F. D.* per omnia bona & catalla ſua, q ſit ad px. Comitat. meum ad reſpond' *A. B.* de placito debiti, &c. Teſte, &c. *Diſtring'*

Upon this præcept of Diſtringas, the Bayliff muſt diſtreyn the Deff. by his goods in ſuch manner as he attached him, ſaving that the Attachment (or goods Attached) is replevyed by two Pledges, but the Diſtreſſe ſhall not be delivered by fewer than four Mainpernors or Suerties

Duerties. Or elſe the Bayliff is to keep the Diſtreſs, as he ſhould do the Attachment not replevied. And if the Deff. thereupon make default, the Diſtreſs not mainpriſed as aforeſaid, The Court ſhall award the diſtreſs to be forfetted, and ſhall keep the ſame goods as forfetted, &c. And if the Diſtreſs be mainpriſed, and the Deff. maketh default of appearance, the Court ſhall then award the Deff. and his Mainpernors to be Amerced. And in both caſes the Deff. ſhall be diſtreyned again to be at the next Court after to anſwer to the Plt, &c.

And the Entrie ſhall be thus.

I.S. opp. ſe verſus *C.D.* de plito debiti, &c. Et ipſe non venit, & ballivus retornavit quod diſtrinxit eum per unum bovem precii v s. Et manucapt. per *E.F.G.H.I.K.* & *L.M.* Ideo in miam. Et ſicut prius diſtringatur, &c.

And ſo proceſs ſhall be made againſt the Deff. by Diſtreſs infinite, untill he do appear jor.

But for every default of appearance that the Deff. ſhall make, he is not amerciable, but Diſtreynable untill he come into the Court, whereat when he appeareth he ſhall find two Pledges to take his default.

Alias diſtring. & plur' diſtring.

Alias. PRæc' eſt ballivo ibid. ſicut al' (vel ſicut plur') tibi preceptum fuit, quod diſtringas, &c. ut ſupra.

Or theſe may be made more amply, as before.

Note, that the goods or cattel, attached or diſtreyned in the county court (whether it be upon a Juſticies, or otherwiſe) ſhall be forfetted upon the default of appearance by the Deff. at the day given him by the Proceſs; *Car autrement ſerra vayne de faire Attachmt ou diſtreſs*, ſi nihil inde evenerit. Vide antea cap. 32. & 35.

A Venire facias Juratorꝰ.

Venir' fac'. PRæceptum eſt ballivo ibidem, quod venire fac' 12. probos & legales homines de ballivo ſuo, quod ſint hic ad prox. cur' ad triand' exit' junct' inter *A. B.* quær' & *C. D.* defend' de plito debiti, vel ſimilia.

And if a full Jury do not appear, then as many as make default, and be not eſſoined, ſhall be amerced, and a Decem tales awarded to ſummon ten moe, as followeth, and the ſame day given to the firſt Jurie.

Decem tales.

A Tales. PRecept' eſt ballivo ibid. quod venire fac' decem tales pbos & legales homines de balliva ſua, quod ſint hic ad prox. cur' cum aliis qui ſibi adtunc & ibm aſſocientur, ad triand. exit. junct. inter *A. B.* quær' & *C. D.* defend. de plito debiti, vel ſimilia.

At which day as many as make default, and be not eſſoined, ſhall be amerced, and then an Octo tales ſhall be awarded, and after that if need be a Sex tales.

And if there appear a full Jury, then both the parties ſhall have their challenges lawfull to the Jurors: And if the Jury find for the Plaintiff, then

then they muſt gibe coſts of ſute and dammages againſt the Deff. And in the like manner they ſhall aſſeſs damages, if they find for an addowmant, in a replevin, &c.

Le deff. eũant atteynt en le County Court de treſpaſs, Ou ſi in action de Dett, Detinue, Covent, ou tielz, ſoit trove enconter le deff. donq; Seũ Levari facias *iſſera al Officer, de levyer les damages & coſts, &c.*

At this day it is uſed, that if the Deff. be ſummoned, and thereupon maketh default, that preſently a Levari facias goeth out, &c. but this ſæms not warrantable.

The form of a Levare fac'.

PRæceptum eſt ballivo ibid. quod de bonis & cattallis *C. D.* levare fac' 20 s. quos *A. B.* in hac cur recuperavit verſus eum in placito debiti, vel ſimilia, & pro miſ. & cuſtagiis ſuis 12 d. Ita quod denar illos habeat hic ad prox. cur, ad reddend. præd. *A. B.* Teſte, &c. *Levare fac'.*

A. B. miles vicecom com &c. Quia *I. S.* ad com. meum (tent. pro com. præd.) recuperavit verſus *Will. E.* 31 s. in placito debiti, & 12 d. pro miſ. & cuſtagiis unde prædictus *Will.* in eadem cur convictus eſt, per judicium cur, Ideo levare facias ſecundum conſuet' præd. 13 s. in dicta curia adjudicat', & dictos 12 d. p miſis, Et denarios illos habeas ad prox. cur, ad reddend. præfato *I. S.* pro dampnis præd. Et habeas ibidem hoc præcept' & qualiter, &c. datum 24. die April' an regni dom. Reg. &c. 20. *Alias.*

Uncar le Execution in le County Court eſt per Diſtreſs ſolom, & mitter in pound tanq; ſoit ſatisfie; Car ilz nont power de vender, ou a deliver le Diſtreſs al party; Ne nul Execution per Corpr giſt la. Finch. 117.

Et accordt al ceo la eſt un caſe incerti temporis, *Lon home prot Pleynt de treſpaſs en le County, & declare as damages de 40 s. Et ad Judgment de recover les 40 s. Et ſur ceo le vic' face un precept a ſon bayly pur prender les bienz le deff. & eux reteyner en Pound overt, tanque le deff. ad ſatisfye le plt pur les 40 s.* Vide Keil. 106.

Auxi ſi home recover in Court Baron, le Court n' ad power de fayre Execution al plt de biens le deff. mz il poet diſtr le deff. apres Judgment & reteyner le diſtreſs en lour mains, tanq; le de deff. ad ſatisfye le plt de ceo que eſt recover en action de t' m. 21. aſſ. pl. 72. Na. bre. 165.

Auxi nota que un ne poet aver Capias *in Court Baron, ne Execution la per* Capias ad ſatisfac', *mes le naturall Execution & Proces la, eſt attachment de biens, &c.* per Martin, 3. H. 6. fol. 54. *Et ove ceo accord* Mr. Finch. fol. 120. *que en County Court nul* Capias *giſt, nec en Proces, nec en Execution, mz* tantum *en Courts de Record.* *Cap. ad ſatisfac'.*

Et uncar ſi ſur le Summons Nihil *ſoit Retorne, donq; un Continuall* Capias *iſſera quouſq; ſc. ſi le ſuite ſoit per Juſticies.* Finch. 352.

And although that the Sheriff ſhall hold a plea of debt upon a Juſticies, yet the Sheriff cannot thereupon award a Capias ad ſatisfac'. See Br. Juſticies 1. & hic poſtea fol.

Neither may the Sheriff take the body of a man in Execution upon a Juſticies. 2. H. 4. Br. Juſticies 4. Finch. 117.

P. Wales 44. And yet the Sheriffs of Wales upon every judgment had before them in their County, or Hundred Courts, in any plaint under 40 s. ſhall and may (by the ſtat. of 34. H. 8.) award a Capias ad faciend' to arreſt the party condemned, or elſe a Fieri facias at the libertie of the purſuant or plaintiff.

And Mr. Littleton (in his reading upon the ſtat. of Weſtm 2. Lectur. 15.) held, that by force of a Juſticies in the County Court, the Sheriff had

had power to award a Capias, and alſo a Capias ad Satisfaciendum; but he made a quære of a Fieri facias. But if the ſute in the County be without a Juſticies, where the tryal is only by *Ley Gager*, there it hath been holden that the plt ſhall have only a Diſtringas to have Execution.

Mes pur aver les viſcounts a faire lour Judgments done en lour County Court (ou Bayliffs in lour Hundred Court ou auter Court Baron) ſaffemt deſtre executé, le party poet aver briefe de Executione Judicii, *le quel le Judgmt fuit en le County Court per* Juſticies, *ou per pleint ſans breife. Et ceo bre de* Executione Judicii *ſerra direct al vic°: Et le bre eſt un* Juſticies, *& in tiel forme.* Rex, &c. Vic. &c. Præcipimus tibi quod Executionem Judicii nuper reddit. in Com̃ de loquela quæ nuper fuit in eodem Com̃: inter A. &c. ſine dilatione fieri facias. 18. Regiſtr. Fitz. 20. b. & Finch. 68. *Et ſur ceo le vic. ſera Execution in tiel manner come ſi le Judgment adeſtre done en Court de Record.*

Et ſi le vic. ne voile faire Execution ſur ceo, un Alias & Pluries *iſſeta, &c. Et ſil ne voet faire Execution del Judgmt dong; Attachemt ſerra direct as Coroners vers le viſcount.* Fitz. 20. b. Regiſtr. 18. *& viel bre* 15. And yet by the ſtat. of 34. H. 8. cap. 26. the Sheriffs in Wales are enabled upon every Judgment had before them in their Countyes or Hundred court in every Pleynt under 40 s. to award a Capias ad Satisfaciendum againſt the body, or a Fieri fac. at the plts choice.

CAP. 112.

Of the Writs of Juſticies.

By the ſtat. of Weſtm̃. 2. cap. 13. it is ordeyned, that the Sheriffs in their Lornes, and in other places where they have power to enquire of treſpaſſors by the Kings precept, or by Office, &c. which words, in other places, ſeemeth to be meant of the County Court, and thoſe words, by the Kings Precept, to be intended when the ſute is by a Writ of Juſticies.

And in this County Court pleas are ſometimes holden by the Kings Writ (out of the Chancery) which is called a Juſticies, or Vicecountiel Writ, for that it doth give ſpecial power to the Sheriff to hold Plea in his County Court; And this Writ is for the diſpatch of Juſtice in ſpecial cauſes, wherewith the Sheriff of his own authority cannot deal in his County Court: and is in effect but a Commiſſion, and giveth this authority to the Sheriff by theſe words. Præcipimus tibi quod loquelam Audias, &c. Or Præcipimus tibi quod Juſticies, &c. (or the like) and endeth in this manner, ſc. Ne amplius inde Clamorem audiamus, pro defectu Juſticiæ, &c. And then the Writ is not Returnable, but the matter ſhall be tryed and determined in the County Court, before the Sheriff, and that by an Enqueſt of 12. men, &c. according to the order of the Common Law: And the proceedings therein ſhall be as in Writs Original of the like nature in the Kings Courts at Weſtm̃ &c. Vide Fitz. 85. g. 86. a. & Finch. 117. And the Sheriff is to make the Proces, &c.

And the ſame Proces ſhall be in a Juſticies, as where the ſute is there by Pleynt, ſc. if it be Account, Dett, or the like, the Proces ſhall be Summons, Attachment, and Diſtreſs; if Treſpaſs, Attachment,

and

and Diſtreſſe: But no Capias in any caſe. Finch. 117. vide hic Cap. 31. & 112.

Auxi pluſors actions dū natur poent eſtre joyne en un Juſticies, ove ſeveral precepts. Finch. 117.

Ceo Juſticies ne alter le nature del Court, car les Suitors ſont Judgs la; Les pleas ne ſont de Record, comt que ſont per breiſe; Et br. de faux Judgment giſt la, & nēy br. de Errour. Fitz. Admeaſs. 2. Co. 6. 11. Finch. 117. & hic Cap.

And theſe writs of Juſticies are of two ſorts;

Some to have the Plea to be holden before the Sheriff onely.

Some to have it holden before the Sheriff, with the Coroners.

In what caſes, or for what matters, a *Juſticies* may be granted, holden, and ſued, before the Sheriff alone.

1. Juſticies de Accompt may be ſued in the County Court againſt one as Bayliff, that ſhall occupy, or take the profits of my Land, &c. Fitz. 117. b. Finch. 120.

2. *Admeaſurement de Dower*, is Vicountiel (ſc. triable in the Sheriffs court) and ſhall be ſued in the County, &c. and lieth for the Heir, ſc. when his Gardian, or himſelf in his Nonage, hath endowed the Wife of his Anceſtor of more than ſhe ought to have in Dower, then the Heir at his full age may ſue this Writ againſt the Wife, and by this ſhe ſhall be admeaſured. Fitz. 148. g. Finch. 118.

And here all the Lands which ſhe hath in Dower within the ſame county ſhall be admeaſured by the Sheriff, and the ſurpluſage taken from her, ſc. ſo much of the Land onely ſhall be taken from her, as exceeds the third part which ſhe is to have in Dower, but ſhe ſhall have no Land aſſigned to her in Dower de Novo. Fitz. 148. f. Finch. 118.

Note, if the wife cometh and ſaith that ſhe is ready to be admeaſured, the Plt ſhall record no damage. Regiſt.

3. *Admeaſurement de Paſtor*, is alſo Vicountiel, and may be ſued before the Sheriff in his county; and being directed to him, ſhall not be Returnable. Fitz. 125. c. And lieth for a commoner, ſc. when another commoner puts on more beaſts or cattel upon the common than he ought, be it a common Appendant, or Appurtenant, ſo it be for a certain number: And here all the commoners ſhall be admeaſured, as well thoſe which have not ſurcharged, as thoſe which have, and alſo the Plt. himſelf (but the Lord ſhall not be admeaſured, Br. view. 5.) Finch. 118.

Mes ceo br. ne giſt, neque per le Signieur vers ſes tenants queux ſurchargen, eque per le tenant vers ſon Signieur qui ſurcharge. Fitz. 125. d.

Upon this Writ directed to the Sheriff, he ought to hold Plea thereof, otherwiſe an Alias, and Pluries, &c. ſhall go out, whereupon if he ſheweth not cauſe, an Attachment ſhall go out againſt him. Fitz. 125. e.

And upon this Writ of Admeaſurement, the Plt. is to enter his Pleynt in the county before the Sheriff, as he muſt upon a Replevin ſued by Writ before the Sheriff. And thereupon the Sheriff ſhall make his precept to his Bayliff to warn the Defendant to appear, and if he cometh, and cannot ſhew cauſe to the contrary, then the Sheriff ſhall make Admeaſurement: But if the Defendant ſhall ſhew cauſe to the Sheriff why Admeaſurement ſhould not be made, then the Sheriff ſhall make no Admeaſurement upon this Writ, but the Plea ſhall be removed into the common Bank, &c. vide Fitz. 125. g.

A Writ of Annuity may alſo be ſued in the county court by a Juſticies, vide Fitz. 152. b.

Alſo it appeareth by the Regiſter of Writs fol. 167. that a man

may ſue a Writ of covenant by a Juſtices in the county court. Fitz. 145. e.

Et ceo ſemble deſtre in le perſonalty ſc. *lon home Covenant ove auter per fait de faire a luy un meaſon, ou auter choſe quecunque; Ou de luy ſervir, &c. Et ne fait ceo accordt a ſon Covenant.*

Et poteſt breve hoc removeri per Pone, & fiat ut in Replegiare: Sed ſi placitum Conventionis ſit ſine brevi in Comitatu, tunc fiat Recordare. Regiſter 167.

Aſſiſe de Nuſance. Vide hic *Nuſãz.*

Curia claudenda. Juſticies de curia claudenda, ſcz. where a man ought to incloſe his ground againſt his Neighbors ground, and will not. Fitz. 127. g.

Vide my other book hic ſix lines, & ſcribe hic.

De cuſtomes & ſervices. Juſticies *de cuſtomes & ſervices*, ſcz. where the Tenant withholdeth his rents or ſervices from his Lord. Fit. 151. b c.

Det. Juſticies *de Debt*, and this may be either for a debt of money, or of other goods; and this may be removed out of the county into the court of common pleas by a Pone, either by the Plaintiff or Defendant. Fit. 119. g. h.

Detinue. Juſticies *de Detinue*, and this plea may be alſo removed by a Pone, out of the county, at the ſute of the Plaintiff or Defendant: but the Defendant muſt ſhew cauſe in his Pone, and ſo néds not the Plaintiff. Fitz. 138. b.

Dower. Juſticies *de Dower*, unde nihil habet: See the form of the Writ, Fitz. 148. b. d.

Droit. Juſticies *de Droit de Gard*; See the form of the Writ, Fitz. 139. f.

Nota que nul brief de garde poet eſtre plede in Countye, frq; breif de Droit de garde. Regiſter 160. *Mez per le viel* Na.br. fol. 97. *Touts breifs de garde frq; breif de Ejectm. de gard purra eſtre pledes en Countye, remove en Bank per Pone.*

Vide plus of theſe particular Writs following in my other book.

Juſticies *in breife de droit patent.* 39. H. 6. Br. Juſtic'. 6.

Juſticies de Homine Replegiando. Et ceo giſt per cẽy qui eſt a tort impriſon, ou inpriſon deteyne; Cõe ſil eſt bailable, Ou ſi ſoit clayme eõe villen, ou coẽ in Gard, lon in veritye il eſt franke & hors de Gard. Fitz. 66. e. & 67. Finch. 119.

Meſne. Juſticies *de Meſne.* See the form of the writ, Fitz. 35. n.

Brẽ de meſne gt qat le tent eſt diſtr. on feare d'eſtre diſtr. per le Signour per a mount.

Juſticies de Nativo Habendo, & ceo giſt per Signiour, quent villen in que il ad inheritance, ſe enfua de luy. Fitz. 77. a Finch. 118. vide *plus* hic cap. 67.

Nuſans. Juſticies *de Nuſans.* Fitz. 184. b. ſc. *quant Molin ou auter petite Nuſance eſt levy al Nuſance d'aſcũ.* Finch. 117. N. br. 110.

Now the writ of Aſſiſe of Nuſans, which are vicontiels (ſcz. which belong to the Sheriff, or which are triable in the County or Sheriffs Court) appears by theſe verſes following:

rica ca gukũ ges lendinum
Fab, ſur, porta, domus, vir, gur, mo, murus, ovile,

Et pons, tradantur hæc vicecomitibus,

Id eſt debent determinari coram vicecomitibus in Comitatu ubi hujuſmodi Nocumenta acciderint.

Et ceux breifs ſont appelles petits breifs de Diſſem. N. br. 110. 111.

Plegiis acquietand'. Juſticies de Plegiis acquietandis. See the form of the writ Fitz. 137. d. f.

Quarentine. Juſticies de Quarentine. Fitz. 161. e.

Note that upon this writ the Sheriff ſhall preſently after the receipt of the writ, award proces againſt the party, to cauſe him to come, &c. and to anſwer, &c. and ſhall not tarry till his County Court, but

but immediately ſhall proceed thereupon as Juſtices ſhall do upon a Commiſſion of Oyer and Terminer, &c. Fitz. 162. a.

Juſticies de Quod permittat. See the form of the writ, Fitz. 123. g. & *le viel* Na. br. 69. *Quod permittat.*

Juſticies de Rationabil. diviſis. Fitz. 128. p. q. *Rationab. diviſis.*

Et ceo br. giſt per Signour ſur qui terr on waſt, un auter Signour qui Signorye adjoyne en auter ville, ad per petit encroache deins tps de memo'y tang; ore, vers le Signour qui iſſint encroache. Vide *le viel* Na. br. 73. & 74. & Finch. 119.

In this the Plaintiff ſhall make his plaint before the Sheriff in the nature of a count, and thereupon the Sheriff ſhall make his precept to warn the Defendant, &c. and when he cometh the Plaintiff ſhall make his count, and the Defendant ſhall anſwer thereunto in the county; and if the Defendant cannot deny it, &c. then the Sheriff ſhall make the partition and diviſion of the Lands betwæn them by mæts and bounds: but if the Defendant will plead, and joyn the iſſue, *ſur le mere droit, & lui mitter in grand aſſiſe*, then the Plaintiff ought to remove this, &c. or the defendant may remove it upon ſhewing cauſe, &c. Fitz. 128.

Juſticies de Replevin ſc. *per biens & Chattels diſtrein.* Fitz. 68. d. *Mez le vic. devt deliverance, prender pledges de* Returno habendo, *cy bien come de proſequendo, per ſtat.* Weſtm. 2. Cap. 2. Finch. 119.

Les deffs recovera coſts & damages ſi le matter ſoit trove pur eux, ou le Plt ſoit Nonſuit, ou auterm. barr. Ibd.

Sr Replevin ſue icy, ſi les biens ſont eſloyne, iſſint que al ſuite del tenant ne pot eſtre reſtore (come eſtream chaſe al fort ou Caſtle, Ou hors del County, &c. per que le vic, ſur Pluries retorne que ſont eſloigne, Proces de withernam iſſera, &c. Fitz. 73. Finch. 119.

Upon the Pluries not ſerved, the power of the Sheriff is determined, 2. H. 7. fol. 6. Finch. 120.

So if the Defendant claimeth property, the power of the Sheriff is determined. See hic Cap. 114. But if the Defendant claimeth no property, then the Sheriff ſhall deliver them, &c.

Juſticies de ſecta ad molendinum. See the form of the writ, Fitz. 123. a. *Secta ad molend.*

Fitz. 86. a. g.

Juſticies de Treſpaſs: Note that for every manner of treſpaſſe done, a man may have this writ directed to the Sheriff to determine the matter before him in his County Court; and by this writ the Sheriff may hear and determine of the treſpas by an Enqueſt according to the order of the Common Law; and the Plaintiff may count upon this writ to the damages of xx. l. or more. Fitz. 85. 86. 87. *Treſpas.*

But the form of this writ of Treſpaſſe which is Vicounticl, ſhall not ſay, or ſuppoſe the Treſpaſſe to be vi, & armis.

And here note, that theſe writs of Juſticies do not onely lye of Treſpaſſes, and other perſonal things, (as of Accompt, Annuity, Covenant, Debt, &c.) but alſo of things and in writs which are Real, (as of Cuſtomes and Services, Dower, &c. as appeareth here before.

Alſo although the Freehold ſhall come in queſtion, where the ſute is by a Juſticies in the County Court, yet the Court ſhall not ſurceaſe, but may determin the iſſue, 14. h. 8. 15. b. Br. Juriſd. 98. Finch. 320. &c. vide.

But if the writ or Pleynt ſhall be, vi & armis vulneravit, or contra pacem, the Sheriff cannot determin them. Regiſter 92.

Note that the words of a writ de Juſticies, are alwayes after this ſort; Rex. vic. Cantabr. ſalutem. Præcipimus tibi quod Juſticies A quod, &c. Co. 6. 11.

Upon theſe former writs of Juſticies, the Sheriff in his County

Court ſhall hear and determin the matters by an Enqueſt of xij. men, according to the Order of the Common Law.

And the Plt. may Count upon theſe writs to the damage of xx. l. or more, yea, to any ſumme whatſoever. Finch. 318.

But note that the Juſticies is no Original, but onely a Commiſſion to the Sheriff, to give him power to hold Plée above xl.s. in his County Court. Br. Juſticies. 1. 3. 3. H. 6. 54. 7. E. 4.

And in a Juſticies, although the Writ be directed to the Sheriff, and be quod Juſticies T. &c. yet the Sheriff is not Judge therein, but the Suters are Judges; and a Writ of falſe Judgment lyeth upon their erronious Judgment, &c. 8 Co. 4. 32. & 6. fol. 11. 7. H. 6. Br. Juſt. 3.

A Juſticies cometh to the Sheriff to hold plée upon an obligation of 1000. marks, the Sheriff by virtue of the ſaid Writ may hold plée thereof; but the Sheriff cannot thereupon award a Capias, nor a Capias ad ſatisfaciendum. 3. E. 4. Br. Juſt. 1.

1000 marks.

Capias ne giſt.

And ſo the Sheriff cannot take the body of a man upon a Juſticies, nor upon the Writ de Nativo habendo, for although the Writ be Habere facias talem nativum, & fugitivum ſuum, &c. yet this is to no other intent, but only to give the Sheriff power to hold plée, &c. And the proces in a Writ de Nativo habendo, is, and alwaies hath been ſummons, attachment, and diſtreſſe. 2. H. 4. 3. Br. Juſt. 4. Faux Im. 30.

So that this Writ of Juſticies is but in the nature of a Diſtringas, to diſtrain a man by his goods, to anſwer there to the plaintiffs action; for his body cannot be touched with it by Law, nor his Lands.

Vie ſeer luy meſme.

Alſo upon a Juſticies directed to the Sheriff to hold plée, the Sheriff cannot make his precept or warrant to the Bailiff of a Franchiſe, neither may he ſuffer him to have conuſance thereof, neither may any other hold plée by force of a Juſticies directed to the Sheriff, but only the Sheriff himſelf. per Curiam. 34. H. 6. Br. Juſt. 2. Fit. Bar. 161.

A Juſticies came to the Sheriff to hold plea of 1000. l. and he held plea thereof in his County, before his Undersheriff, and that was aſſigned for error, in a Writ of falſe Judgemene. 21. H. 6. Br. Officer. 38. & Deputy. 19.

What Pleas ſhall be holden by Writ of Juſticies *in the County Court, before the Sheriff, with the Coroners.*

1. The Writ de Odio & Atia, for the replevying or bayling of perſons indited of murder. But this is out of uſe. Vide Finch. 120.

2. The Writ de recaption may alſo be ſued in the County Court before the Sheriff and the Coroners. Fitz. 72. d. h. 73. d.

Et ceo bre gt quant celuy qui biens fuer diſtreine devant, per Rent ou ſervices, ſont diſtreyn arere per meſme cauſe, pendt le plea en le County Court. Finch. 121. Vide plus ibm. & Fitz. 71.

Si home ſoit convict devant le vic. en bre de Recaption, *il ſerra amerce, & render damages al party.* Finch. 73. d.

Note, where any plea is holden in the County Court by a Juſticies, yet the ſame may be removed into the Court of Common plees.

Proces.

Attachment.

Nota, que le Proces in Juſticies *eſt attachment, a quel jour ſil appiert, ou ſoit eſſoine, le choſe per que eſt attach ne ſerra forfeit, mes ſil ne appiert, ne eſt eſſoine, ſerra forfeit.* 21. E. 4. Br. Attach. 11.

Plearemove.

Note, that whenſoever an action (or what action ſoever) is brought or ſued, in the County Court before the Sheriff, by a Juſticies, or otherwiſe, be it by Pleynt, or Writ, the ſame ſute or plee may afterwards be removed out of the County Court, into the Kings Bench, or Common

Common place for them to hold plee thereof by the Kings Writ directed to the Sheriff, either at the ſuits of the plaintiff or defendant.

Fitz. 69. 70. a. Libr. Intr. tit. Juſticies. And this the plaintiff may do in moſt caſes without any cauſe ſhewed by him in his Writ: But the defendant cannot remove the plea, without ſhewing cauſe in his Writ; As if the Defendant will ſhew that he before whom the Writ depends, maintaines or favours the plaintiff, &c. Fitz. 70. a. & 119. i. Vide Plo. 74. & Finch. 122. Regiſtr. 84.

Regula. *On le deff. poet plead un forreine plee, que ne poit eſtre trie in le County Court, &c.* Fitz. 119. i. *Sicome on pleynt eſt affirme en le County de* xx. s. *ou, &c. le deff. poet pleede un Relz en forein County ou Ville, Ou auter choſe que ne poet eſtre trye in le County Court, Et ſur ceo le deff. poet remover le plea.*

Nota que ſi le Replevin ſoit ſue in le County, per

Fitz. 70. Finch. 122. { *Briefe* / *Plaint ſans briefe* } *doit eſtre remove, per* { *Pone.* / *Recordare.* }

Nota que Recordare, Pone, ou tiel, ſone a nul auter intent frq; a remover choſe ou Suite en Courts le Roy, Et ſont en nature de Certiorare, *Et ſur le remover, le* Recordare, *ou* Pone *eſt determin; Car le plea ne ſerra tenus ſur eux, mez ſur le pleynt que eſt remove, & les primer Pledges eſtoyer.* Finch. 122.

Le pone, lon eſt al ſuite del plt. en Replevin, command que le vic. Summon le deff. que il ſoit in banco a reſponder, &c. 12. E. 4. 11.

Mez lon eſt al ſuite del deff. eſt forſq; un dicas querenti, *le quel neſt que prefixion del jour al partyes.* Finch. 122.

Un Certiorari, *auxi poet eſtre direct al aſcun Court de Record, d'eſtre certifye d'aſcun Record que eſt devant eux: Et per tel bre de* Certiorari, *le Record meſme poet eſtre Remove, &c.* Vide mõ Country Juſtic. cap. 134.

Si pleint ſoit remove hors del County per Recordare, *&c. & le briefe de* Recordare *port date avant que le pleint fuit enter in le county, uncore le record eſt biẽ remove, pur c' que amb' courts ſont courts le Roy.* Fi. 71. d.

Fitz. 71. a. *Si le pleint ſoit diſcontinue in le County, unc' le pl. ou deff. poit remover ceo pleint in common bank, ou bank le Roy, per* Recordare, *&c. & ſerra bone, & il poit counter ſur ceo, &c. & le Court tener plee ſur ceo pleint: car ſi le pleint ſoit continue in le County, & iſſue joine ſur c', unc' riẽs ſerr' remove forſq; le pleint ſolement, & in common bank le pl. counter de novel, &c.*

Si pleint ſoit remove hors del County in banco, *ne ſerra apres remaund, quia amb. ſont Court del Roy; & le cauſe de revom't hors del County neſt traverſable.* Vide Fitz. Cauſe de remover plee 17. 13. E. 3.

Si le vic. remove le plee hors d'aſcun Court per Pone; al ſuit le pl. ou deff. & puis les bailifs, ou officers del Court proceed ſur le pleint, & done judgement, & font exec', &c. donq; le deff. ou cẽy vers que judgment ou exec' eſt fait, aũa brief dattachment vers le bailifes, ou ceux que iſſint proceed al judgement; &c. de rn'd. al Roy cibien del contempt, come al party des damages, &c. Fi. 119. k.

Nota que hors de Court Baron, ou auters tielz Courts del Signeurs, Plees poet eſtre remove per un Accedas ad Curiam: *Sed ſi ſont les Courts le Roy, donqs ſi ſont in Courts que ne ſont de Record, come le County Court, la le plee ſerra remove per* Recordare, *ou* Pone; *Mez in tiels Courts le Roy, que ſont de Record, le plee ſerra remove per* Certiorare.

Br. Court Bar. 12. *In action de treſpas port in le County Court, ſi le deff. plead ſon franktenement, ou auter tiel plee, le Court ne doit proceeder ouſter, mez doiet ceaſer de tener plee; & ſils proceed, breife de faux judgement voet giſer.* *Son franktenement.*

En Dett port in le County pur Rent ſur une Leaſe a terme des ans, le deff.

plede

plede que le plt luy inſeof de cel ter, ceo ouſter le Court del Juriſdiction.

Iſſint ſi le deff. plede que le ter eſt Auncien Demeſne.

Si aſcun choſe que concerne Franktenement vient en queſtion en un pleynt de treſpaſs, on tiel (en le County Court,) le Court ne proceder; come lon le deff. avowe pur damage faſant, & plt juſtefy pur Comon de paſtur. Mes ſuite (in le County Court) per breife proceder; Et pur ceo en tiel caſe ſur pleynt in lt county court, le party n'ad remedy frq; breife de treſpaſs vicountiel, & per ceo le vic. poet determin l'iſſue cont que franktenement viet in debate. Finch. 117. 120.

In trus des arbres compes, le deff. clayme property in le ſoyle; ſi le plee ſoit ſanz bre, ceo court n'ad power pur determin le Realty. N. bre. 48.

Auxi ſi le deff. claime le pl. deſte ſon villein, le court ceaſer de tener plee; Ibid. *& ſilz proceede bre de fx Judgmt giſt.* Br. Court Baron. 21.

Sur faux Judgmt done en ceo court, le party greive avera bre de faux Judgmt a remover ceo, que voile que le vic. recorder ceo, & d'aver in Banco Finch. 117.

Prohibition. *Si home ſue auter en le county court, pur charters concernant inheritance,* Fitz. 47. b. *ou franktenement, prohibition giſt.*

Si home impleade auter in le county court, (ſans Juſticies) *des dets,* Fitz. 46. a. *ou chattels, que amount a le ſumme de 40. s. le party avera prohibition vers le vic. commandant luy que il ne tener plee, & que il dira al party pl. que il ſuer in le common banke: On le party poet aver* Superſedeas. Fitz. 239. h.

Si home doit al auter ſinque marks, & le creditor ſua ſeveral pleintes de ceo in le county court vers le detter, Prohibition *ou* Superſedeas *giſt.* Fitz. 46. a Finch. 116.

Iſſint eſt ſi home voil ſuer in le county court, briefe de Covenant, ou de Treſpas, ad damage de 40. s. ou pluis, le party avera Prohibition *ou* Superſedeas. Fitz. 239. h. n. bre. 63. Ibidem.

Iſſint ſemble ſi en le County le plt demand 39. s. & declare al damage de xvj *d. le Court ſerra ouſte de juriſdiction.*

Iſſint ſi le executors ſue in le county court, pur det de ſixe markes, per divers pleints, &c. lou le det eſt ſur un contract, ou ſur un obligation, ore le defendant poet monſtre cel, & pleader al juriſdiction del court, ou il poet aver briefe de Prohibition *ou* Superſedeas, *&c. & ſil aver Judgement in aſcun des pleints ſue del parcel de ceo det, uncore in le prohibition il poet luy inhibiter de proceder in ceux pleints, que ſont pendants, & que il ceſſa del execution del judgement del reſidue.* Fitz. 46. e. & 239. h.

Apres judgement.

Auxy ſi home ſue in le county un pleint de 20. l. & ad judgement de recover ceo in meſme le court, uncore le defendant poit ſuer un briefe de Prohibition (*ou* Superſedeas) *commandant le vic' & les ſuitors, que ils ne executer cel Judgement, coment que ils ad admit le juriſdiction avant.* Ibidem.

Apes exec'. *Iſſint apres Judgement done, & execution agard in le Count Court, (de det de ſum de 40. s. &c. ou der dammages in treſpaſs amountant a tiel ſum, ou pluis) le deff. poet aver briefe de prohibic' al vic' que il ſurceſſer de faire execution, Et ſil ad diſtr' le party de faire ſatisfaction, &c. que donq; il releaſer eeſt diſtreſſe, &c. & que il revoke ceo que il ad fait in ceo part.* Fitz. 46. a.

Nota ſi le vic' &c. ne ſurceaſe, ſur tiel prohibition deliver a luy, donque Alias, Pluries, & Attachment, giſer vers le vic' &c.

Nota que eſt rule in le Regiſter, Que ſi placita de cattallis, vel debitis, quæ ſummam quadraginta ſolidor' attingunt vel eam excedunt in comitatu (vel in alia curia) ſine breve placitentur (quod abſit) non fiat inde breve de falſo judicio, nec recordent', nec breve de Execut' Judicii; exceptis cur' civitatis, & aliis, que ſecundum conſuetudiñ, hujuſmodi juriſdict' habent, Fitz. 46. 47.

Auxi

Fitz. 86. g. *Auxi nota, que pur cheſc' maner de treſpaſs fait, home poet eſlier de aver* Treſpaſs.
br'e direct al vic' a determin' ceſt matt' devant luy in ſon County; Ou de ſuer briefe direct al vic' retornable in Bank le Roy, ou common Bank.

Fitz. 47. a. Br. Juſtic' 5. *Et unc' le vic' ne poet tener plee in ſon County Court de treſpaſſe, ou auter action, lon loffence ſerra lay deſtre* vi & armis, *& ſil fait, le deff. poet aver* Superſedeas, *ou prohibition al vic' command' luy de ſurceſſer, &c.* Finch. 116. & Fitz. 239. d.

Nota per Littleton, *que home poit aũ* Juſticies *de treſpaſſe ſans* vi & armis, *& la le deff. ne ferra fine pur le treſpaſſe* 8. E. 4. 15. Br. Juſtic' 5. vide Fitz. 85. g. *que le briefe de treſpaſſe que eſt viconntiel, ne dira* quare vi & armis, &c. Et vide *le forme del briefe* ibidem.

Sur faux Judgement done ſur pleint in County ou Hundred Court, & ſur briefe de Juſticies *in le Counte, briefe de faux Judgement giſt & nẽy briefe de error, comment que le Judgement eſt de det, ou treſpaſſe ouſter* 40. s. Fitz. 17. 18. & 19.

Nota, pleint ne poet eſtre fait in County Court, ſi non in plein County, Plaints
& ſedente curia, & non extra curiam; *car les ſuitore ſont Judges la, & le vic' eſt forſq; miniſter, & le proces ſerra agard per les ſuitors.* 21. E. 4. Br. Pleint. 21.

Uncore vic' poit faire replevin hors del Court, aliter ſerra miſchiefe de terger per mes beaſts tanque le County, Et ceo ad eſtre uſe de temps dont memory, & c. per tout Angliterre, per Pigot & Brian ibid. & 9. E. 4. fol. 48.

Mes Whithernam ne poet eſtre award on grt, niſi in pleine County, Pigot ibid.

Plees tenue devant le vic' in ſon County, ne ſont de Record, ſoit pur bre de Juſtices, *on autermt.* Br. Recog. 18.

Touts Pleynts enter devant le vic', & c. doit eſtre per Eſcript, car home ne ſerra miſe a reſponder a nul choſe, ſil ne ſoit matter en Eſcript. per Littleton. 9. e. 4. 48.

La manner de quel entrea. Vide hic cap. 114.

Auxi nota que tiel entries, pleints, reſponſiones, barres, & iſſues, ſont deſtre fait, & miſe eins, al county courts, come ſont uſe in le Hundred court, ou Court Baron, Mutatis mutandis.

Auxi touts trialls (pur pleynt) devant le vic' in ſon county court, ſerra ſolemt per gager del Ley (ſc. *per le ſerement del deff.*) *uncar per Proſcription poet eſtre per Jury,* ſc. *per le verdit de xij. homes, que eſt enconter le common courſe.* Finch. 117.

Nota, que Ley gager doit ſemper eſtre fait devant le Judge. Co. L. 168. b.

Al common Ley ſur Gager del Ley in aſcun Court de Record, le party doit aver prot Fideles teſtes ibm.

Mz. in Courts que ne fuer de Record le deff. poet aver Gage ſa Ley ſanz fideles teſtes, *tanq; le ſtat.* de Mag. Charta cap. 28. Co. L. 168.

Et in Dett vers Enft deins age, ceſt ſuffic. cauſa de remover le Plea, pur ceo que il ne poet Gager ſon Ley.

Mz. ou le ſuite eſt per Juſticies, *la le Triall ſerra per un Enqueſt de* xij. *homes.* Stat. Weſtm. 2. cap. 13. & Fitz. 86.

Auxi le triall icy (ſur pleynt) poet eſtre per Examination, come ſi in plee de dett, le deff. demand quid le plt ad de prover le dett, le plt. poet produce ſes teſt moignes al Contract, que ſerra jure, & Examin, & ſils done Evidence, per le plt, il recovera ſon dett & damages.

Auxi ſi le deff. Confeſs le action del plt, en tiel caſe le plt. recovera ſon demand, & c.

Concernt Gager del Ley, le ſtat. de Mag. Charta cap. 28. *voet* quod Nullus ballivus de cætero ponat aliquem ad legem manifeſtum, nec ad jura-

juramentum ſimplici loquela ſua, ſine teſtibus fidelibus ad hoc inductis. ſc. *nul mitter aſcun hoē a ſa Ley (in aſcun action devt Vic. Baily, Eſcheater ou Coroner) per ſon ſimple parol ſanz Pledges a ceo priſes: Nec ad* Juramentum, *ſc. a ſa Ley faire d'aſcun choſe, ſanz xi. maines, & il m. le xij. maine. Et ſi aſcun fait econter ceo ſtat. Prohibition gt, ou brē. de faux Judgement.*

Quant aſcun voile gager ſa Ley, il doit vener al Commencement del Court & doit proffer de gage ſa ley, &c. Le gager del ley eſt en tiel maner ſc. (in action de Det port ſur ſimple contract, Detinue, & Tlz) le deffs doit jurer ſur un liever, que il ne doit al plt. l'argent que il demand ne aſcun part del ceo, or that he not detaineth the goods, ꝛc. *Et il coviel aver ove luy xi. maines* (ut ſupra, *ou tiel nomber que le Court agarder*) *de jurer ove luy,* ſc. *que ilz intend, ou penſe en lor Conſciences, que il diſoit & jure verament; & ſur ceo il ſerra diſcharge.* Vide Co. 9. 31. *que le deff. fera ſa ley de Duodecima manu,* ſc. *xj. ouſter luy m. Et ſic ley gager count vault un Jury.*

Mz ſi action ſoit commence ſur aſcun eſpecialty, ou ſur matter de Record, ou ſur choſe touche terr, &c. la le deff. ne ayder luy meſme per gager del ley, nz de mitter in Trial per verdit de xij. homes.

Auxi in plea de treſpaſs, le deff. dira que il neſt culp. Et ſur ceo il peut offer de gager ſa ley; ſi ne ſoit in treſpaſs Contra pacem.

Et in ceux caſes ou le deff. gage ſa ley, apres ſon iſſue per ley gager priſe, le deff. avera jour uſque al prochein Court, & de trover Pledges de gage ſa ley, ut ſupra.

Mz ſi le deffs fayle de ſa ley gager (ſc. *ſil fait default al jour appoynt par le Court; ou ſi ſes teſtmoines refuſe a depoſer, &c. Ou ſi tots teſtmoines ne veigne eins, &c.*) *en cheſcun tiel caſe le plt. recevera tot ſots demands, oveſque ſes damages, accordt a ſon Declaration, ſans aſcun taxation del Court.*

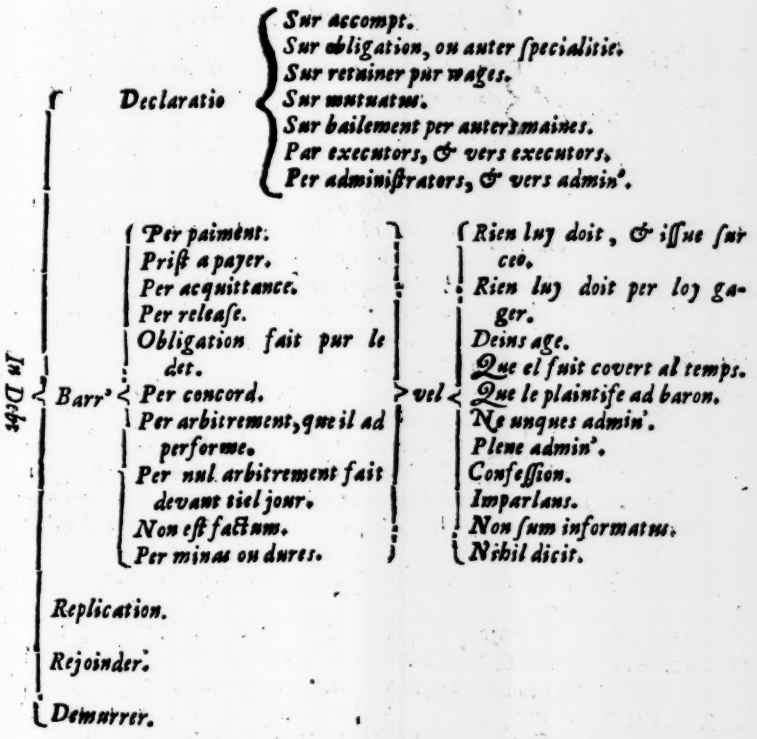
Ley gager poet eſtre in divers auters Caſes, cōe in action de Covenant, Detinue, Replevin, &c. Mz cēy que voet gage ſa ley, ſoit il bien adviſe que il traverſa le point ſur que laction eſt maintēy; cōe le duety en Caſe de Det; le detainer en Caſe de Detinue; le breach del Covenant en brē. de Covenant; & le priſel del avers en Caſe de Replevin, &c.

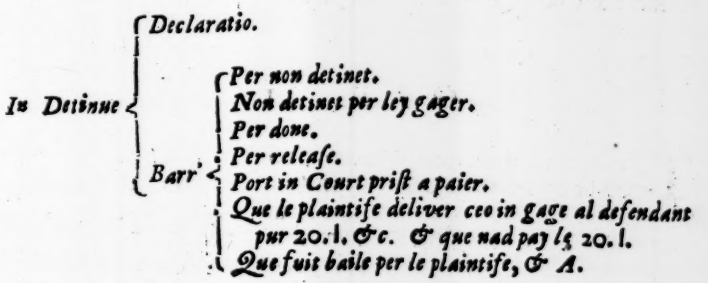
If any man will enter any pleints in the County Court, they muſt be entred in the full Court before the Sheriff, ꝛc. after this manner.

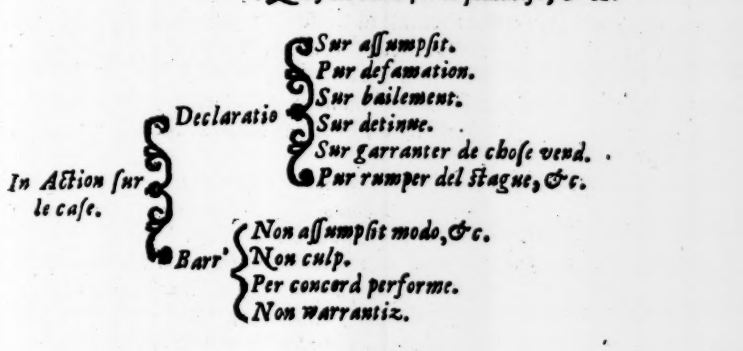
A. B. Quærit. verſus *C. D.* de placito debiti (vel de placito detentiōn vel de placito captiōn & injuſte detentiōn averiorū ſuorum, vel de placito Convent. fract. vel de placito tranſgreſſ. vel ſimilia, as the caſe ſhall be.)

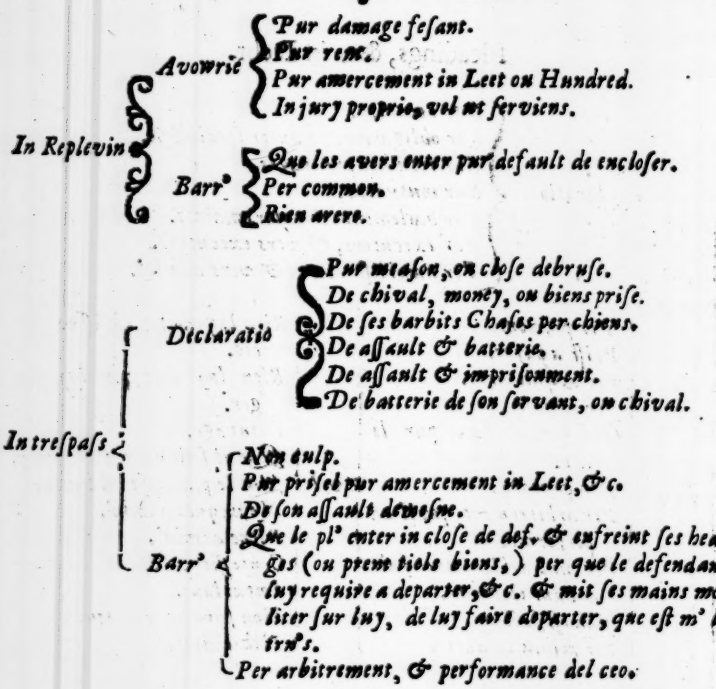
Plead.

Pleadings, &c. in Debt.









For the better and more ample form of all these, and the like pleadings, &c. See the book of Entries.

The Sheriff and his Officers and Clerks, for the entring of Pleints, Proces, Plees, and judgements in their County Courts, shall take the ordinary and usual Fees, and if they take any more, it is extortion.

CAP. 113.

Replevin sur pleynt.

THe Sheriff upon complaint made to him (that the beasts of any man be taken and wrongfully withholden) may deliver them without any let or gainsaying of him that took the beasts, if they were taken out of Liberties; And if the beasts were taken within any Liberty, and the Bayliff of the Liberty will not deliver them (upon the Sheriffs precept) Then the Sheriff for default of those Bayliffs shall cause them to be delivered: and this is by force of the statute 52. H. 3. Whereas before by the Common Law, when any mans Cattel were taken and withholden, the Sheriff could not make Replevy or deliverance of the Cattel, or the goods so taken and withholden, without the Kings Writ. Dyer 246. Fitz. Retorn. 17. 52.H.3.c.21. P. Repl. 1.

Issint si un Signeur ust destreyn son tenant, per ses services or Rent *arere, le tenant purra aver un Replevin al Comõ Ley; Mes ceo il ne purra aver on suer, sinõ per briefe, tanqs ceo statut. de* Marlebr. *fait.* An. 52. H. 3. c. 21. *Et Ore per cel stat. le tenant poet maintenant venir al vic. ou le prise est fait, Et le vic. fera la deliverance sur son Plaint, sãz* br. Lectur.

Et sic Nota *a ceo jour, que le tenant, ou auter person, queux avers sont prise & injuste deteyne, pot eslier de suer Replevin per briefe, Ou per Pleynt & ceo per force del ceo statut. de* Marlebr. *que O deyne, quod post querimoniam, &c. vic.* deliberare potest, &c. ibd.

But

But the Sheriff muſt firſt take Pledges of the Plt. de Proſequendo, & de Returno habendo (ſee hic poſtea.) Alſo the Sheriff muſt take heed that he delivereth not one mans Cattel for anothers.

3. E. 1. c. 17. P. Diſtr. 4. Co. 5. 93. By another ſtatute made Anno 3. E. 1. It is provided, that if any take the beaſts of another man, and drive them into a Caſtle or Fortreſſe, and there hold them (being ſolemnly demanded by the Sheriff, or Bayliff) againſt gages and pledges, ſo that the Sheriff or Bayliff cannot make deliverance of them to the owner, There the Sheriff, or Bayliff, taking with them the power of the County or Bailiwick, ſhall beat down the Caſtle: And the Plaintiff ſhall recover double damages for all the loſſe he hath received by his Cattel, hindrance of his gainage, or in other manner (after the firſt demand of the Cattel made by the Sheriff, or Bayliff) againſt him that took the Cattel, or againſt his Lord, if he be not able to anſwer them: Weſtm. 1. 3. E. 1. 17.

But the Sheriff may not break the Cloſe to make a Replevy, where there is Gate, except the Gate be locked &c. 20. H. 6. 30.

In deteynant diſtreſſes la fuer divers miſchiefs al Common Ley.

1. *Cēy que ad diſtreyn voet eſloyner le diſtreſs hors del County, mz. per remedyer ceo, le ſtat. de* Marlebr. cap. 4. *fuit fait.*

2. *Si cēy que diſtreyn voile que le Owner n'aver n delivery de ſes beaſts, adonque ou il voile Encloſer eux in Caſtle, &c. On chaſer eux en Franchiſe, iſſt que le vic. ne poet fair deliverance, comt que il voet; per remedyer ql sort, il eſt ore perview per ceo ſtat. de* Weſtm. 1. cap. 17. *que ſi ſoit en Caſtle ou forcelet, le vic. poet abater ceo, & faire delivery. Et ſi ſont en Franchiſe, que donque le vic. poet Enter le Franchiſe de faire replevin* (ſc. *(ur default del bayliffe de Franchiſe)* vide hic poſtea.

Iſſint ſi cēy que diſtreyn voet mitter les beaſts en aſcun auter Liew, en le quel delivery ne poet eſtre fait, Cōe ſil mitt eux en un Parke, ou en un meaſon, ou en un Clooſe, &c.

Mz. ſil avoit miſe ou Enchaſe les beaſts, &c. En un Rectory, la le vic. ne puiſſoit faire deliverance del eux. Fitz. 68. g. *Car nient plus que avers poet eſtre diſtreyn la, nient plus poet ilz eſtre deliver la; per que per avoider tots inconveniences, le ſtat. fait 1. & 2. Ph. & M. cap. 12. Ordeyn que les avers priſe ne ſerve miſe en auter Liew, que en Pound overt, le quel eſt expound en noſtre livers, d'eſtre tiel Liew a que le owner poet vener a doner ſon Cattel ſuſtenance, Et a que le vic. poet vener per faire deliverance ſans danger d'auter.* 5. H. 7. fol. 9. 11. H. 7. 14. & 21. H. 7. 41.

Auxi per le dit ſtat. de Weſtm. 1. *ſi le Cattel ſont miſe in Caſtle, &c. le vic. part prender Poſſe Comitatus, de faire deliverance.*

Iſſint ſi les avers ſont miſe en un Parke, Ou en un meaſon, &c. Ou ſi aſcun auter diſturbāz ſoit fait al vic. (ou al auter bayliffe le Roy, &c.) ilz poet prender Poſſe Comitatus per faire deliverance.

Mz le vic. ou auter Officer, doit prinz venir al Liew, & la demand le view del Cattel, & de admoniſt l'auter de faire deliverance; Et ſil ne poet aver le view, Ou il ſoit diſturbe, ou deny de faire delivery, ſoit aſcun preſent ou nēy ilz ont eſtre garny, le vic. maintent abater le Caſtle, &c. & fera deliverance del Cattel. Vide *le dit ſtat.* & Britton fol. 54. & *viel* N. br. 44.

Mr. Bacon libro 3. cap. 37. writing hereof ſaith thus: Officium vicecom. eſt, ſi quis Conqueratur de injuſta Captione, vel injuſta Detentione contra vadium & plegium, Quod cum breve Dñi Regis ſupervenerit & receperit, &c. Vel etiam ad Querelam alicujus ſine breve, (accepta ab eo prius ſecuritate de proſequendo) in propria perſona ſua, ſi ad hoc intendere poſſit, accedat vicecom. ad locum ubi averia

detenta ſunt, ut dicitur, vel ſi ipſe vicecomes non poſſit, mittat ſervientem ſuum, Et ſtatim cum venerit, petat viſum de averiis illis ubicunq; incluſa fuerint. Et ſi ſit aliquis Contradictor vel qui velit Contradicere quod inde viſum habere non poterit, vel propter hoc in eum manus violentas injecerit, Statim levet hutesium & clamorem, Et capiat delinquentes, & in Gaolam projiciat, quouſque dñs Rex inde præceperit voluntatem ſuam, Et averia capta deliberet ſi inveniantur. Si autem inveniri non poſſunt, eo quod alibi fugata ſunt forte, vel extra com̃ in fraudem, Et Captor terram habuerit in com̃ & Catalla, capiat ſerviens Dñi Regis de averiis illius in duplum, & illam detineat donec averia ſic abducta reducantur. And a little after he ſaith, Cum autem vicecomes vel ſerviens Regis viſum habuerit de averiis Captis ſine impedimento & contradictione, ſtatim faciat ea deliberari querenti, Et ſtatim det utriq; eorum diem ad proximum Comitatum, ut illi qui cepit averia, quorum captio dedici non poterit contra Recordam vic. vel ſervientis, ſive juſta fuerit ſive injuſta, oſtendet rationem quare illa juſte ceperit, Et tunc ille qui petit dicat ſi poſſit quod injuſte: Ad quem comitatum nullam de jure competeret Captori Eſſonium, cum injuſta Capitio & detentio contra vadium & plegium, dici poterit quædam roberia contra pacem Dñi Regis, &c.

So that by this former ſtatute of Weſtm̃ 1. cap. 17. The Sheriff may break open a mans Caſtle or Houſe, to make a Replevin, when the Cattel or goods of another, which he hath diſtreined, by by him conveied into his houſe, or Caſtle, to prevent the owner to have Replevin of his goods: And yet here before the Sheriff (or his Officers) ſhall break ſuch houſe, or Caſtle, they ought firſt to demand that the cattel, or goods, be delivered them; Co. 5. 93.

At the Common Law if the Tenant had ſued a Replevin againſt his Lord in the County Court, the tenant might have removed the plea into the Court of Common Pleas, and there if the Lord had avowed for his Rent or other ſervices, and the tenant had diſclaimed to hold of him, the Lord thereupon ſhould have had a Writ *de droit ſur Diſclaymer*; and if it were found that he held of the Lord, the Lord ſhould recover the Land in lieu of the ſervices for ſuch falſe diſclaimer: But yet this miſchief was, that if the tenant had perceived that the Lord would avow, &c. the tenant would have diſclaimed, and then preſently he ſhould have recovered his dammages, and the Lord ſhould have been amerced for that by the diſclaymer the County Court was ouſted of Juriſdiction, for they could not try this Diſclaymer, in as much as they were not Judges of the Record: And the Lord himſelf could not have removed the plea but in ſpecial caſes, And by reaſon hereof the Lords were often at great miſchief: Again, if the tenant had ſued a Replevin in the County Court, and the Lord had there avowed, and then the tenant had diſclaymed, there the Lord had no remedy, For a writ of right of Diſclaymer he could not have had in ſo baſe a Court (quære) And therefore to take away theſe miſchiefs, that ſtat. of Weſtm̃ 2. cap. 2. hath now ordained, that after ſuch Diſclaymer, the Lord may remove his plea into the Kings Court, where upon every plee he ſhall have his remedy, &c. which ſtat. of Weſtm̃ 2. is in theſe words following. Foraſmuch as Lords of Fees, diſtreyning their Tenants for ſervices due unto them, were many times grieved, becauſe their Tenants did Replevie the diſtreſſes (by Writ or without Writ) And when the Lords at the complaint of their Tenants did come (by Attachments) into the County (or other Court, &c.) and did avow the taking of the diſtreſſe to be good and lawful, by reaſon that the Tenants did diſavow to hold ought of him which Weſtm. 2.

which took the diſtreſſe, and avowed it, The that diſtreyned was Amerced, and the Tenants went quit (and puniſhment cannot be there aſſigned for ſuch diſavowing, &c.) It was therefore by the ſame ſtatute ordained, that where ſuch Lords cannot obtain Juſtice in the Counties, (and ſuch Courts) againſt their Tenants, as ſoon as they ſhall be attached at the ſuit of their Tenants, a Writ (ſc. a Recordare or Pone) ſhall be granted to them to remove the plea, before the Juſtices, before whom, and none other where, Juſtice may be adminiſtred, unto ſuch Lords) & the cauſe ſhall be put in the Writ, becauſe ſuch a man diſtreyned in his fee for his ſervices and cuſtoms to him due, &c. P. Repel. 2. *Recordare.*

Comt que les parols de former ſtat. de Weſtm 2. *ſont*, Quam cito attachiati fuerint, *uncar le Seigneur poet ceo auxi remover devant aſcun attachmt, & cye redyment come le plee eſt commence; Car intant que al Common Ley le plt puiſſoit aver remove le plee ſanz cauſe, la Avowant auxi que eſt actor & in Lieu dun pleynt puiſſoit aver ceo remove. Et ſic ore par ceo ſtat. le Seigneur poet remove le plee, cybien come le tenant puiſſoit devant al Common Ley: Mz le Seigneur ne poet remove le plee ſanz cauſe, On le tent poet ſanz cauſe, &c.*

Et nota, que aſcun cauſe que voet inducer favour, ou hatred, eſt ſufficient; Come ſi un des parties ſoit Seigneur del Court, ſoit de Kin al party, ou ſi faveat, &c. Vide *antera cauſes pur Remover.* Regiſtr. fol. 84.

Alſo becauſe it chanced ſometimes that the Tenant after he had Replevied his beaſts, would ſell them away, or drive them far off, whereby return could not be made unto the Lord that diſtreined, if it were adjudged, and if the Sheriff had returned upon the Writ de Returno habendo, quod averia elongata ſunt, &c. then the Lord might have had a Withernam, to have ſo many beaſts of the Tenants, &c. But if the Tenant had no beaſts, &c. then the Lords were without remedy, It is therefore provided by the ſame ſtatute, That Sheriffs, and Bayliffs, from thenceforth ſhould not only receive of the plaintiff, pledges for the purſuing of the ſute before they make deliverance of the diſtreſſe or beaſts taken: *Plegii de proſeq.*

Co. L 145. b. But alſo pledges for the return of the beaſts, if return be awarded; And if any take pledges otherwiſe, he ſhall anſwer for the price of the beaſts: & the Lord that diſtreyned ſhall have his recovery by Writ, that he ſhall reſtore or deliver unto him ſo many beaſts or cattel; And if the Bayliff be not able to reſtore or ſatisfie, his ſuperior (ſcz. the high Sheriff, or he which made him Bayliff,) ſhall reſtore or pay it: (P. Repl. 3.) 13. E. 1. c. 2. *De Retor' habend'.*

Vide Br. Detinne. 6. *E ſemble que le recovery in ceux caſes ſerra per briefe de Detinne*, ſc. *ſi les Pledges ne ſont ſuffic. ou autermt nient accordat al ſtat. & c. reſpondeat vicecomes, & c.* de pretio averiorum, &c. ſc. *in bre de detinne port vers luy, & c. il delivera al anter tants des avers come ilz fuer de queux il fuit d'aver retorne.* Tamen per alios *ceux parolz n'ont tiel intendemt, que ſilz ne retorne ſuffic' Pledges* de Proſequendo, *que action ſerra done vers le vic. mz que ſi le vic. ne retorne ſuffic. pledes* de Proſequendo, *que par ceo le puniſſimt ſerra come fuit al Common Ley*, ſc. *Amerciament, Et que ceux parolz ont relacion ſolemt al Pledges* de Returno habendo. Vide Br. Pledges. 1.

Iſſint ceo ſtat. de Weſtm 2. cap. 2. *icy provide, que lon avant divers foits les beaſts fuer eſloignes, que ore Pledges ſerra* de Returna habendo; *Et per ceo ſi al jour del retorne d'eſtre fait, les beaſts ſont eſloigne, le vic poet aver ſon remedy envers le Pledges.* Lectur.

Mz ſi le vic. ne prender pledges de averiis returnandis, &c. *& lauter eſloigne les beaſts, donq; le vic. ou bayliff reſponder pur le price del beaſts, & c.* ut ſupra.

Sed per aſcun opinions, le vic. n'eſt tenus de receive ou prender tielz pledges

pledges en aſcun anter replevin, ſinon tantum on le ſuite on controverſy eſt per enter le Signeur & ſon Tenant pur Rents ou ſervices; mes ſi ſoit pur damage feſant, le dit ſtat. ne tiel lieu en ceo. quære.

And note that theſe Pledges ought to be ſufficient as well in Eſtate, as in Law; for if they be poor in Eſtate, or if they be inſufficient in the Law (as within age, women covert, or perſons outlawed, &c.) the Sheriff muſt anſwer it: And yet if one of them be ſufficient it ſeemeth to be well enough. Lectur.

Alſo there muſt be at the leaſt two Pledges named, as well de proſequendo, as de returno habendo, for that the ſtat. in both caſes ſaith Pledges; So that if the Sheriff ſhall return only one to be a Pledge de proſequendo, and one other de Returno habendo, the Sheriff ſhall anſwer according to the form of the ſtat.

But if ſuch Pledges ſhall be ſufficient at the firſt, although they ſhall afterwards happen to be impoveriſhed, or to dye, or to be outlawed, &c. yet the Sheriff is excuſed. ibm.

Le remedy que le vic. ad vers les Pledges dicitur eſtre per un Scire facias. *en le quel ilz ſerra compel, ou de pleader choſe en diſcharge, ou de render le valne des avers; mes pur eux adire, que ilz ne fuer Pledges, ilz ne ſerra reſceive, car contra al returne del viconnt.* ibm.

Mes ſi le ſuite ou Replevin *fuit en le County per Pleynt devant le vic.* dicitur *que* in Banco Regis, *ne in Common Bank vic. navera* Scire fac. *vers les Pledges: Et* ideo vide *ſi le vic. ne poet cauſer le party en tiel caſe de ſuer per bre, & donq; de trove Pledges in Chancery ou le bre eſt ſue, ou de trover les Pledges la ou le Returne eſt d'eſtre eue.*

Comt ceux Pledges returne per le vic. ne ſerra receive adire que ilz ne fuer Pledges enconter le returne, mes que ilz ſeront charges ſi les avers ſont Eſſoigne, vic. en apres ilz averont bre de Diſceit envers le vic. per cauſe que il ad returne eux per Pledges de un tiel lon ilz ne fuer unqs ſes Pledges, Et ilz recover lour damages de tant que ilz fuer grieve, & ingamage. Lectur.

If the Sheriff ſhall receive or take C. l. or any other ſum of money, or any other thing in or for a Pledge of the Return, this is not good, but he muſt take Pledges (or Sureties) for the Return; And ſo of Pledges de proſequendo. ibm.

But yet at this day the Sheriff, or the Bayliff in the Sheriffs name, do uſe take a bond of the party to whom the Replevin is granted for the proſecuting of the ſute, and alſo to make Return, &c. the form of which bond you may ſee hic poſtea.

Note, that as ſoon as the Return of the cattel is awarded to him which did diſtrein the ſame, the Sheriff ſhall be commanded by Writ, to make return of the cattel, to the party which took the diſtreſſe. Stat. 13. E. 1. c. 2. Weſtm. 2. 1.

A ceo jour ſur le bre de Returno habendo, *ſi le vic. retour* quod averia Elongata ſunt, *laiſſera un Withernam, &c. Et ſi le vic. retourne* Nihil haber, *donq; iſſera* 3. Capias, *& un* Exigent.

Apres Returne del beuſts, &c. agard, & returne de eux fait, ſi le partie Replevie eux arere, &c. Vide plus le ſtat. de Weſtm 2. c. 2.

Deputies. Alſo by another ſtatute made in the times of King Philip and Queen Mary, for the more ſpeedy delivery of cattel, taken by way of diſtreſſe, it is further inacted, That every Sheriff ſhall depute and appoint four Deputies (at the leaſt) in his County, to make Replevies, and deliverance of ſuch diſtreſſes, in ſuch manner and form as the Sheriff may and ought to do. 1. & 2. Ph. & M. c. 12.

So then (although by the Common Law the Sheriff could not make Replevies, or deliverance of any diſtreſſe, without the Kings Writ, as is ſhewed before Dyer 246. Yet) now by force of theſe former ſtat. the

the high Sheriff himſelf, the Under-ſheriff, or any other of the Sheriffs Deputies, (appointed as aforeſaid) upon complaint made to them, or any of them, by any man that hath his beaſts or other goods taken, and wrongfully withholden or impounded. And upon pledges found de proſequendo, & de returno habendo, &c. may without any Writ to them directed, (in all places) make Replevies, and may preſently deliver the diſtreſſe (ſcz. the beaſts, or goods ſo taken and withholden:) And alſo *Sans breve.* the Sheriff may hold plea thereof, and determine the ſame in the County Court.

Britton. f. 4. But then the Sheriff, &c. is to give day unto both the parties, untill the next County Court: At which day the Plaintiff may be eſſoined if his plaint be entred; But if he make default, then the Defendant may demand Judgement of the Non ſute, and ſhall have retorn of the diſtreſſe; And the Plaintiff, and his pledges ſhall be in miſericordia.

But the Defendant may not be eſſoined at the firſt day; For if he make default, then the diſtreſſe ſhall be awarded to the Plaintiff, And the Defendant in miſericordia.

And if both the Plaintiff and Defendant ſhall appear at the firſt day (either in perſon, or by Atturney,) then the Plaintiff ought to count, or put in his Declaration in writing againſt the Defendant.

Or elſe the party may have a Writ (ſc. a Juſticies) (out of the Chan- *Per breve.*
Vide Bracton lib. 3. c. 37. cery directed) to the Sheriff; whereupon the Sheriff, or his Bayliff known, and ſworn, (after ſureties or pledges found, &c.) ought to go to the pound, &c. and to deliver the beaſts, or goods, impounded, to the party, and to give day to the parties, ut ſupra.

But when a man ſueth a Replevy by Writ to the Sheriff, he ought preſently to enter his plaint before the Sheriff in the next County, Fitz. 78. a.

Note, where the Replevin is by pleynt in the County Court, it ſhall not proceed if any thing touching the freehold come in queſtion. Fitz. 70. b.

Alſo where it is by Writ, upon the Pluries not ſerved by the Sheriff his power is determined, and the parties ſhall plead in Bank. 2. H. 7. 6.

If the Sheriff, or his Bayliff be diſturbed in the Execution of this Writ, they may levy a power, &c. and may take ſuch diſturbers, and impriſon them.

And if the Bayliff ſhall return that the party will not ſuffer the deliverance to be made, the Sheriff (whether it be before him without Writ, or by Writ) may of his own authority award an Attachment, and after a Diſtringas, untill he comes in; and if, (when he cometh in) he be convicted, he ſhall make a fine to the King before the Sheriff (ut dicitur) and this ſeems to be by force of the ſtat. of Marl. cap. 3. Lectur.

Britton. 54. But if the beaſts, or goods, be in an houſe, ſo as the Sheriff or Bayliff cannot come by them; or be driven, or carried into another County, &c. then may the Sheriff take of the goods, or beaſts of the deforce or (to the double value) in Withernam: ſee hic antea Bracton libro 3.

Fitz. 77. c. But if the party that took the goods, do claim property in them in the County, then the power of the Sheriff, or his Bayliff ceaſeth and
Vide plus hic cap. 70. Fitz. propri. Prob. 1. 2. 5. Co. L. 145. determineth, ſo as they may not Replevy or deliver them, whether it were by Plaint, or by Writ; but the other party ought to ſue his Writ De proprietate probanda. Vide Fitz. propriet. probanda 4.

Note that the ſervant may not claim property for his Maſter. Nor an Eſtranger cannot claim property; but that the Sheriff ought to make

make deliverance notwithſtanding the ſtrangers claim; and may make deliverance notwithſtanding the ſervants claim.

But one Defendant may claim property.

Note alſo that upon property found for the Plaintiff, the Sheriff ſhall make deliverance, and then alſo upon ſureties found by the Plt. de proſequendo, the Sheriff ſhall alſo attach the Defendant to anſwer as well the King as the party: Fitz. propriet' pband. 3. Dyer 173. & Regiſter f. 83. accord. Et p. Co. 8. 60. a. *le defendant que claime propertie fauxment, & c. ſerra fine & impriſon mes ceo ſerra: per les Juſtices* in Banco, *& nemy per le viconnt.* See hic cap. 73.

Upon a Replevin directed to the Sheriff if the Defendant claimeth property, the Sheriff may not make deliverance but muſt return, Quod deff. clamat averia, &c. eſſe ſua. And then upon the Writ, de proprietate probanda, the Sheriff in his County Court, and before the Conſtoners, ſhall Impanel a Jury, to Enquire, (in præſentia partium if they will) of the property (ſc. to whom the property at the time of the taking was.) And if the property be found in the Deff. the Plt ſhall be Amerced by the Sheriff. And if it be found that the Deff. had nothing in the Cattel or Goods, then he ſhall yield damages to the Plt. and ſhall alſo by the Juſtices be committed to Priſon, there to remain untill he hath paid a Fine to the King; and the Sheriff may preſently Attach the Deff. hic antea titulo Replevin.

Note that in a Proprietate probanda, the Jury are not to Enquire but onely to, or in whom the property was at the time of the taking. Fitz. Proprietate probanda. 5.

Alſo if the Deff. claims property, where the tryal is (in the County Court) by Pleynt, the Plt may have a Writ de Proprietate probanda to the Sheriff, to trye the property; and if thereupon it be found for the Plt. then the Sheriff is to make deliverance; and if it be found for the Deff. then the Sheriff can no further proceed. Co. L. 145. vide *plus la.*

And in ſuch caſe the very title of the Cattel, or Goods ſhall be tried, and given in Evidence before the Sheriff. Fitz. Propriet. 5.

Nota que ſur cel briefe de Proprietate probanda, *le party poet challenge le Jury.* Quære.

Auxi ſur le verdit del Enqueſt, Atteynt poet eſtre ſue.

Mez ceo br. de Proprietate probanda *ne giſt, ou ne ſerra grt ſinõ ou le Replevin eſt ſue per br. Et nẽy ou eſt ſue per pleynt: Auxi ne ſerra grt ſine ſur Retour del vic.* Fitz. propriet. prob. 4. *Auxi* dicitur *que ſi un come bayly al un auter clayme property a ſon Mr. que per cel clayme le vic. ne leſſera per faire le deliverance, per ceo que ſur ceo clayme la ne iſſera aſcun br. de* Proprietate probanda, *Et que niet Obſtant un clayme de property, que le vic. fera le deliverance, ſinõ lon ſur le clayme br. de* Proprietate probanda *iſſer': Et lon un come bayly al auter clm property, nul br. iſſer' de Enquirer de ceo, & le cauſe eſt per ceo que ſi ſoit trove que ſon Mr n'avera nul property, le Mr alleroit al priſon, & feroit fine al Roy, & c. le quel ſeroit miſcheivous, que le Mr ſerra fine & impriſon per un faux clayme de ſon ſervant. Et ſic nota que nul br. de* Proprietate probanda *iſſera, Ne le vic leſſera de faire deliverance, ſinõ cẽy a que droit le property eſt clayme, ſoit party al br.* Lectur. Tamen vide 11. H. 4. f. 4. Fitz. Propriet. probanda 1. & hic antea & Quære.

Replev. If a man ſue a Replevin in the County, by Plaint, without Writ, and the Sheriff maketh his precept to the Bayliff to make Replevy, and the Bayliff returneth to the Sheriff at his next County, that he cannot have the view of the Cattel to make deliverance, &c. or that they be Eſloigned, Then the Sheriff at the ſame County Court ought to enquire 9. E. 4. 48. Fitz. 74. b c. Weſtm. 1. cap. 17.

enquire thereof by an Enquest (of Office.) And if this be found by Enquest, that the Cattel be Eſloigned, (or conveyed away, &c.) then the Sheriff in the ſame County Court may award, (ex officio) a Precept, in the nature of a Capias in Withernam, directed to his Bayliff, to take the beaſts of the Defendant, &c. or elſe the Plaintiff may have a Writ out of the Chancery to this purpoſe. Fitz. 74. b. c. & *le Regiſter* 81. 82.

Fitz. Wither. 2. & 10. N. bre. 45. See Fi. 119.

with

But whether the beaſts of the Defendant, being taken in Withernam, ſhall be delivered to the Plaintiff, or that the Sheriff ſhall keep them, &c. may be a queſtion: It appeareth by the words of the Writ (of Withernam out of the Common place) that the Sheriff ſhall keep them, untill the Sheriff can make Replevy and Deliverance to the Pl. of his Cattel, and ſo is the book, 2. H. 4. Fitz. Wither. 3. that the Sheriff ſhall keep them: And yet by the uſe of the Kings Bench they ſhall be delivered to the Plaintiff, and to have them untill his own ſhall be reſtored to him again. Fitz. 73. f. & 74. a. b. d. Dyer. 59. & 189. & Finch. 119. & *le Na. br.* 45.

And therefore where the Sheriff in his County Court ſhall award a Withernam, quære, if there the Sheriff may not either keep the Cattell himſelf, or deliver them to the Plaintiff (to keep untill, &c.) at his pleaſure; And whether the Sheriff or Plaintiff ſhall have the keeping of them, it ſeemeth reaſonable that the Defendant ſhall alſo pay for the keeping of them before he hath his Cattel again.

For the form of this Precept from the Sheriff to the Bayliff, to take the beaſts of the Deff. in Withernam (although in other Caſes the Sheriffs command to his Bayliff by word onely ſufficeth, as you may hic cap. 21.) yet this Precept muſt be by writing, and ought to be enſealed with the ſeal of the Sheriffs Office. Vide 22. H. 6. fol. 40.

But the Sheriff upon complaint made to him of cattel taken, &c. may command his bayliff by word of mouth, to make Replevy of them; and it is as good, as if it were by a precept in writing; for there a more ſpeedy delivery of the Cattel is required. And perhaps the Sheriff, nor his bayliff have any thing about them wherewithall to Write, &c. Fitz. 69. e.

Command per parol.

Si home ſua Rep' de pots & pauns, Withernam *ſerra des auters biens al value* 31. E. 3. Fitz. Whither. 9. See hic cap. 80.

Viconnt in pais agard' a Withernam *prender al value, & nemy al Nomber.* Vide Fitz. Wither. 7. & 10.

Viconnt bien agarder Withernam *ſur plaint avant luy in pais, Et ceo ſur Elongata Retorne per ſon Bayliffe; Mes covient primes de enquirer per enqueſt, ſi le Retorn' del bayliffe ſoit voier, &c.* Fitz. Wither. 2. & 10.

Fitz. 17. p. *Le proces ſur cel* Withernam; eſt Alias, & Plur. & ſic infinite. Fitz. 74. p.

Note where the Pleynt in the County Court is of *priſel des avers* (ſc. of taking and withholding Cattel or other goods,) the Entree muſt be made in this manner, or the like following:

I. S. Queritus verſus *I. D.* de placito Captionis, & injuſte detentionis averiarum ipſius *I. S.* contra vād. & pleg. Et invenit plegios tam de clamore ſuo proſequendo, quam de averiis ſuis returnand. ſi Retorn inde adjudicetur, ſc. *Johannes* Deñ. & *Richardus* Feñ.

And in this Pleynt of *priſel des avers*, the Precept to attach the Deff. muſt be to this effect following.

The form of a Replevin.

Replevie. A. B. miles vicecomes com̃ præd' ballivo hundred' de H. nec non *Jo.* Canteb.
S. ballivo meo hac vice & eorum utrique, conjunct' & divisim salutem, Quia *W. P.* invenit mihi sufficient' securit' tam de clam̃ suo prosequendo, quam de averiis suis (*viz.* una spadone, tribus equis sive una bove, &c.) quæ *Jo. C.* cæpit & injuste detinet, ut dicitur' retor', si retor' inde adjudicetur, Ideo ex parte d̃ni regis vobis & utriq; vestr̃ conjunct' & divis. mando, q̃ repl̃ & deliber' fac' p̃fat' *W. P.* aver' sua præd. (sive bovem præd') Et q̃ ponat' seu, &c. p̃ vad', & salvos pleg' p̃fat' *Jo. C.* Ita q̃ sit ad p̃xim̃ com̃ meum apud castrum Canteb' tenend, ad respondend p̃fat' *W. P.* de p̃dicto capt' & injuste deten', aver', suor' præd', Et qualit', &c. Mihi ad p̃xim̃ com̃ meum certificet' seu, &c. sub periculo incombent', dat' sub sigillo officii mei, Ultimo die Julii an̄ regni d̃ni nr̃i *Jacobi* die grat' Angliæ Scotiæ Franc' & Hiberniæ regis fidei defensor' &c. *viz.* Angliæ Franc' & Hiberniæ vicesimo & Scotiæ quinquagesimo sexto.

p̃ me *A. B.* Milit' Vic'.

Or thus.

A. B. miles vicecomes com̃ præd. ballivo hundred de Radfeild, Necnon *B. C.* ballivo meo hac vice itinerante, &c. Ex parte D̃ni Regis vobis & cuilibet vestrum conjunctim & divisim mando quod deliberari facias, *R. D.* averia sua quæ *K. W.* cepit & injuste detinet contra vad & pleg. ut dicitur. Et pone per vadios & salvos plegios præd. *K. W.* quod sit ad proximum Comitatum meum apud C. tenend die, &c. ad respondend præfato *R. D.* de p̃dicto prædicto, &c.

And if this Replevin be granted by a deputie, to the Sheriff, then he must set his name to the Replevin, Thus;

p̃ me *I. A.* unum deputat' dicti Vic' secund' formam statuti.

Mz le vic. (*ou son Deputy, &c.*) *devant cel Precept fait, doit prender* (*Obligation, ou Pledges* sc.) *ſuffic. ſecurity del plt,* de prosequendo, & de Returno habendo *ſi, &c.* (ut supra) *autermt le vic. render al avowant le value del avers replevy, ſi retorne ſoit agard. Le forme del Obligation & Condition, ſequiter icy.*

Si le vic. (*ou ſon Deputy, ou Bayliff*) *retorne pur Pledges certen perſons, lon le ſon tnul tiels, la il eſt ſicome il ad receive ou retorne nul Pledges, Et in tiel caſe le vic. &c. ſerra charge de render al avowant les avers ou biens, ou le value del eux,* ut ſupra.

Si le vic' retorne Pledges, lon revera ilz ne fuer Pledges, ou ne ont conſent, uncar dicitur que le Seigneur, &c. avera Scire fac. *vers eux, (& que ilz ne ſerra receive adire que ilz ne fuer Pledges, enconter le Retorne del vic.) Et que ilz ſerra charge ſi les avers, &c. ſont eſloyne: Et apres ilz poet aver lour bre de Diſceit envers le vic. per retorner eux Pledges, lon ilz ne fuer revera; Et in ceo ilz recovera lour damages vers le vic.*

Mz ſi l'avowant ſua Scire fac. *vers les Pledges, il n'avera remedy apres vers le vic. ou auter Officer.*

Now by force of the former Precept of Replevin, the Bayliff must go to the place where the cattel, &c. whereof the pleynt is persued be, within the Shire, and shall deliver the cattel to the plt: And also shall Attach

Attach the deff. to appear at the next County Court, to answer to the plt, in his said Plaint.

This Attachment of the Deff. must be made by the Offic̃er of the Deff. goods; And the goods so attached the Officer may keep in his own possession until the next Court; Or the Officer may suffer the the Deff. to replevy the same by two Pledges, &c. in such manner as is before declared, and as he may do in a plee of Dett, or Trespass.

When the Replevin is sued, and the goods delivered, and then the plt becomes Monsute in his Pleynt, if the Deff. be ready in Court to avow the taking, then shall there be awarded to the Deff. *Detorne des Avers*, in this manner following.

Retorne des Avers.

A. B. miles vic. com̃ præd. ballivo Hundred de R. &c. Quia *R. D.* in averia & catalla que *W. B.* cepit, &c. virtute Quærimoniæ suæ inde presens fac. replegiare fuerint. Non est prosecut. quærelam suam prædictam, Sed ad Comitat. meum tentum apud C. die &c. exact. defalt. fecit, per quod per Considerac. ejusdem Curiæ adjudicat. fuit prædicto *W. B.* Returñ averior. & catallor. prædict. quæ iterato præfato *W. B.* absq; bre Dñi Regis de Judicio deliber. non possunt, Ex parte Dñi Regis tibi mando quod præfato *W. B.* de averiis & catallis illis retorñ fac. Datum sub Sigillo, &c.

And thereupon the Officer shall deliver to the avowant the first Distress.

And if the first Repl' be not executed, then the Sheriff or his Deputy, may grant an Alias Replevin, and so a Pluries Replevin, vel causam mihi significes; and after a toties quoties, if need be.

An Alias Replevin.

Cantebr; A. B. miles vicecom' com̃ præd. ballivo hundred' de R. Necnon *I. S.* ballivo meo hac vice, &c. Quia *W. P.* invenit mihi sufficient' securitatem tam de clamore suo ꝓsequendo, Quam, &c. (ut supra) Ideo ex parte dñi regis vobis, & utrique vestrum conjunctim & divisim mando, sicut Alias vobis mand averia præd. (sive bovem prædict.) eidem *W. P.* sine dilatione replegiare fac', seu unus vestrum repleg' fac' vel causam mihi significet, vel unus vestrum signif. Quare mandata mea vobis inde directa exequi noluisti aut non potuisti. Et q̃ ponat' seu unus vestrum ponat per vadios & salvos pleg. præfat. *Io. C.* lta q̃, &c. (ut supra.) *Alias Repl'.*

And if the Baylif do not deliver the Plaintiff his cattel upon this Alias Replevin, nor shew sufficient cause why he did not, then the party may have a Pluries Replevin, which must be made Verbatim, as the Alias Replevin was made, only changing this word Alias into Pluries. *Plur' Repl'.*

And so note, that upon all these Replevins, there must be security given by Pledges, or else a bond (of ten pounds at the least) taken of him to whom the Replevin is granted, for his appearance at the next Court after, and for the prosecution of his sute, and to make return of the cattel, if return be adjudged.

The form of which Bond and Condition muſt be as followeth.

The Obligation. NOverint univerſi per præſentes me *Will^o P.* de C. in com̃ C. geñ teneri & firmiter obligari *A. B.* milit^o vicecom̃ com̃ præd. in Decem libris bonæ & legalis monetæ Angliæ ſolvend' eidem vic' aut ſuo certo atturnat', executor̃, vel admiñ ſuis. Ad quam quidem ſolutionem bene & fideliter faciend', obligo me hæred' executor̃ & admiñ meos firmiter per præſentes, Sigillo meo ſigillat' dat' &c. (as all other Bonds are.)

The Condition. THe condition of this preſent obligation is ſuch, that if the above bounden W. P. do appear at the next County Court to be holden at the Caſtle of Cambridge, and then and there do proſecute his action with effect againſt I. C. for wrongful taking and detaining of his cattel, viz. of one Gelding and three Horſes, as is alledged, and do alſo make return thereof, if return thereof ſhall be adjudged by Law, and alſo do ſave and keep harmleſs, and indempnified, the above named Sheriff, his Under-ſheriff, and Bayliffs, for, touching and concerning the delivery of the ſaid cattel, That then this preſent Obligation to be void and of none effect, or elſe the ſame to ſtand, remain, and continue in full force, ſtrength and vertue.

Recordare. And if in this caſe the taker of the cattel do juſtifie the taking, as in his Freehold, then the County Court can proceed no further therein; but the cauſe muſt be removed from thence by the Kings Writ (out of the Chancery) called a Recordare facias loquelam, directed to the Sheriff, returnable the next term following, either into the Kings Bench, or into the Court of Common Pleas, which the party will: and then this Writ of Recordare ought to be openly read and allowed in the ſaid Court, to the end that notice may be given thereof to the Plaintiff in the Replevin, that he may appear at the day of the return thereof, and declare againſt the taker of his cattel, or elſe the taker will have a Retorno habend averior̃, to the diſadvantage of the Plaintiff.

Mez ſoit le plee pendt en le County Court per bre, ou ſanz bre, le deff. ne poet remover cel plee del Replevin, *hors del County en* Banco, *ſanz ſurmiſe en le* Pone, *ou* Recordare; *Et pur ceo il eſt uſe a faire ſurmiſe en le bre, & le bre dit, fiat* Executio iſtius brevis ſi cauſa ſit vera, & aliter non. Plo. 208.

Auxi per ceſt removement de plee, rien ſerra remove, forſq; le Plee, & le Avowyr; mez le Proces, le proceedings, & continuance de ceo, ne ſerra remove.

Et ſi al jour que ilz aver per prefixion en le bre que remove le plee, le deff. ſoit abſent, Attachmt, & Diſtreſs iſſera, & per default ſur ceo proces de Utlary: *Mez ſi celuy que ne remove le plee face default, un garniſhment iſſera, Et ſil ne appiert* Retorne *ſerra agard, &c.*

Authoritie del Court. Now concerning the authority of this Court, & of the Sheriff, &c. therein.

If a man be convicted before the Sheriff and the Coroners (in his County Court) in a Writ of Recaption, the Sheriff may amerce him deeply or grievouſly, and alſo may award damages to the party; but the Sheriff can impoſe no fine in this Court upon any offendor, for that no Court can impoſe any fine, but ſuch Courts as are Courts of Record, whereas the County Court is no Court of Record: Co. 8. 41. & 60. & 11. 43. Fitz. 73. d. old N. bre 45. Co 8. 41. a. & 60. b.

Si

Si le Signeur priſt exceſſive diſtreſs (come x. boeffs pur ij. *s. de rent, &c.) & de ceo le tenant fait ſon Pleynt en le County Court, & le Signeur ceo confeſs, ſemble il ſerra amerce la, per force del ſtat. de* Marlebr. cap. 4. *Autermt eſt on le Signeur diſtreyne per homage, fealty, on Suite; on per damage feſant: En le premier cuſes le Signeur ne ſerra amerce, per ceo que les ſervices ne ſont apportionable, ne valuable.* Br. Diſtr. 2. 36. 79. & 80.

Mz ſi le Seigneur ne poet un auter diſtreſs trover ſur le terr, frq; diſtreſs que amount al 40 *s. per rent de* ij *s. la il ne ſerra amerce.*

Si le Signeur diſtreyn ſon tenant per damage feſant, on pur ſon rent, ſuite, ou ſervices, & enchaſe les beaſts hors del County, ſemble que il ſerra amerce, per force del dit ſtat. de Marl. cap. 4. vide Br. Diſtreſs. 37. & 54. & Fitz. Barr. 120. & Diſtr. 1. 16.

Si home ſoit Nonſuite en le County Court, il ſerra Amerce la.

Iſſint de deff. ſerra amerce in aſcun ſuite ſue vers luy (en le County Court) ſi ceo ſoit trove vers luy. Kitch. 112.

Iſſint ou le deff. fault de faire ſa Ley al jour que a luy eſt done, en aſcun pleynt ſue la vers luy. Stathm 12. R. 2. fol. 65.

Mz ſi tiel Amerciaments ſont outragious, ilz avera bre de Moderata miſericordia, *& ceo per le ſtat. de* Mag. Charta. cap. 14. Fitz. 75. f.

Et ſemble per meſme le ſtat. que tiel Amerciaments in le County Court ſerra affire per Pares. Mz rather it ſeemeth now by the ſtat. of 11. H. 7. cap. 15. that two Juſtices of Peace ſhall firſt view the Eſtreats of the Amercements of the Sheriff, and that the ſame Eſtreats muſt be Indented between the ſaid Juſtices, and the ſaid Sheriff, and ſealed with their ſeals, before that the Sheriff (or his Officers) may levy the ſame Amerciaments.

Al Common Ley le vic' en ſon County Court voile prender fine del party plt, on del deff. ſilz n' aver plede balemt, &c. mz ore per le ſtat. de Marlebr. cap. 11. *per beall pleder nul ſerra fine, ne amerce, ſil ad ſuffic. matter en ſon Count.* Vide Fitz. 270.

Furors ſummon al County Court, ſilz ne appeare (mz font default) ilz ſerra amerce, ſinon que aſſetts appeare ſur meſme le Pannell.

Auxi nota, quod de quolibet placito quod in comitatu deducitur & terminatur, Miſericordia quæ inde provenit vicecomiti debetur, quæ quanta eſſe debeat per nullum aſſiſam generalem determinatum eſt; Sed pro conſuetudine ſingulorum Comitatuum debetur, in quodam Comitatu plus, in quodam minus. Glanv. lib. 9. c. 10.

Uncar bre de moderata miſericordia *giſt, en home eſt amercia in le County Court (ou in auter Court Barron) de plus que dever eſtre amercie & nul ayant regard al quantity del treſpas, & ſi le vic. ne moderate le Amercemt per ſeſt bre* Sicut alias, *& apres Attachmt giſt vers le vic. & apres diſtr. ou proces de* Utlary, &c. N. brev. 47.

Et tielz Amercements ſerra auxi aſſeſſe per pares, ayant regard al quantity del treſpaſs. Ibm. & ſtat. Mag. Charta cap. 14.

Alſo (it ſeemeth) that if any contempt or diſturbance to the Court be made before the Sheriff or Steward, in the County Court, they may amerce ſuch offendors, for ſuch contempt or diſturbance. But ſuch amercement needeth not to be affired: for whereas the ſtatutes of Mag. Charta, c. 14. and of Weſtm 1. c. 6. will, quod nemo amercietur niſi ſecund quantitatem delicti, which cannot be known but by affiring, yet it ſeemeth that the ſtatutes, and this affiring are to be underſtood for amercements ſet or impoſed for offences committed or done out of Court, and not of contempts or miſdemeanors done or committed in Court, Co. 8. 41. & 11. 43.

Court, before the Judge or Steward there; who having conuſance thereof, and of the manner and quality of the offence, are the more meet to impoſe, tax, and aſſeſſe ſuch amercements for ſuch offence; and ſo ſuch amercement to be in the nature of a fine impoſed (by the Sheriff or Steward) upon the offendors: ſee 10. H. 6. fol. 7. Br. Amercement 50. & Co. 8. 41. Fitz. 75.

And for an amercement in the County Court, the Sheriff may diſtrain throughout all the County: 2. H. 4. Br. Diſt. 13. and ſhall have all ſuch amercements to his own uſe as it ſeemeth. See hic cap. 124.

Impriſon. But the Sheriff may not impriſon one, nor arreſt, or take the body upon the Writ de Nativo habendo, &c. (Br. Faux. Impriſ. 30.) Nor in any other ſute, Nor for any contempt or offence done in the County Court, as it ſeemeth.

Recog. The Sheriff in his County Court may take a recogniſance to pay another a certain ſum of money at a certain day, and if it be not paid at the day, the conuſee may have a Writ de Executione facienda out of the Chancery to the Sheriff to make Execution thereupon, and to Levy the money de bonis & Catallis of the Deff. *Et in tiels Caſes ſemble que le viſcount poet vender les biens le partie, pur payer le Conuzee*: Fitz. 133. b.) vide *le viel* Na. br. 67. & Regiſter 153. Fitz. 132. c. 133. Regiſter 153.

And this is where there is a Plea of Debt depending in the County Court before the Sheriff, between two, either of the parties may there acknowledge a Recogniſance (before the Sheriff) to the other party, of any ſum of money (as it ſeemeth) and that whether the Plea be there depending by Writ, or without Writ, as Walker Fitz. held.

Alſo if a man will come in to the County Court before the Sheriff, and there in Court will acknowledge to owe, or pay a certain ſum of money to another perſon at a certain day, &c. when there is no plaint of action depending there between the parties, it ſeems by the opinion of M. Fitz. that ſuch recogniſance is good, if it be under the ſum of fourty ſhillings. Fitz. 133. a. And the party have the Kings Writ *de Si Recognoſcat* directed to the Sheriff to make Execution of ſuch a Recogniſance. Ibid.

And by this Writ *de Si Recognoſcat*, the Sheriff may diſtreyn until the Cogniſour hath made gree to the party for the Debt. Na. br. 67.

Le forme del dit briefe al vicont pur faire execution. Vide Regiſter 152. Fitz. 133. b. N. br. 67.

Mes il ſemble per le dit briefe de Si Recognoſcat, que ſi le recogniſor ne voile recognuſtre le det arere devant le vicount quant in vient a luy de faire execution, &c. mes dire que il ad ceo pay, &c. que donque le vicount par le dit br. ne poet faire execution de ceo. Anxi iſtud bre. non ſit niſi de pecunia numerata. N. br. 67. Fitz. 133. b.

And yet Mr. Brook, tit. Recog. 16. & 18. ſeemeth to doubt, whether the Sheriff at this day may take a Recog. in his County Court, it being no Court of Record; eſpecially, except the Recog. be taken upon a Plea depending there before the Sheriff by a Writ of Juſticies, in which Caſe the Sheriff is a Juſtice by Commiſſion, for that the Juſticies is a Commiſſion to him, And all Commiſſioners who have Authority to ſit in Juſtice for the Commonwealth, may take a Recog, as appeareth here before. Cap. 27.

Auxi quant al aſcun matters; le County Court eſt Court de Record. Vide hic cap. 4. & 111.

Again in a Writ of Right depending in the Lords Court, the Sheriff at the requeſt of the Deff. may grant a Tolt to remove the Plea into the County Court. Fitz. 3. f. 4. a.

CAP.

CAP. 114.

Finch. 115.

KNights for the Parliament, Coroners, and Verderers. } their Election, is always made by the Kings Writ, (directed to the Sheriff) and made in the open and full County Court. Fitz. 63. 64. *Knights del Parliament, eſley al County.*

And these must all be chosen by the freeholders of the same County. (Fitz. 163. k. 164. c.) And to be published there.

And the Sheriff is to return and certifie into the Chancery, every such Election (of the Knights, Coroners, and Verderers,) and the names of those which are so chosen, to any of these places. Fitz. 163. k.

See hic antea fol.

The Knights for the Parliament are to be chosen between the hours of eight and eleven of the Clock in the forenoon, and Sedente Curia; And being so chosen, are also to be published there by the Sheriff.

The names of such Freeholders as are at the Election of Coroners, and Verderers, ought to be set down in the County Court book for to certifie such their Election. *Coroners & Verderers.*

And yet the Coroners their Election also may be by voyces, or by holding up hands, &c. (as the Knights of the Parliament, whereof see hic antea fol.) and then their names, or number cannot be certainly known nor set down. Pl. 126. a.

Also the Sheriff is to minister unto the Coroners, and Verderers, their several Oaths for the due Execut. of their Offices. Fitz. 163. m. 164. c.

When the Coroner is chosen, the high Sheriff of the same County, or his Under-sheriff must give him his Oaths, as followeth. *The Coroners Oaths.*

First the Sheriff shall give the Coroner his Oath to the Supremacy.

The form of which Oath. See hic antea fol.

Then the Sheriff must give the Coroner his Oath concerning his Office, as followeth.

The Coroners were anciently Knights. See Register 177. b. & stat. Westm. 1. cap. 10.

There be commonly four Coroners in every County.

There be certain special Coroners within divers Liberties.

There is also the Coroner of the Kings house.

The several Offices of every of these Coroners. See Minsh.

The form of the Coroners Oath, for the due Execution of his Office.

YOu shall swear, that you well and truely shall serve our Soveraign Lord the Kings Majesty, and his liege people, in the Office of a Coroner: And as one of his Majesties Coroners of this County of *Cambridge*: And therein you shall diligently and truely do and accomplish all and every thing and things appertaining to your Office, after the best of your cunning, wit, and power, both for the Kings profit and the good of the Inhabitants within the said County, taking such Fees as you ought to take by the Laws and Statutes of this Realm, and not otherwise: So help you God, and the holy Contents of this Book; *and so let him kisse the Book, to affirm his Oath.*

The Coroners are Judges of the Utlawries, and are to sit with the Sheriff at every County Court, there to give Judgements upon the Ut-

Utlawries (as appeareth before. cap. 110.) And they are to give, and pronounce the Judgement, and to make a short remembrance thereof in their book; But the Coroners are not to make Return of the Utlary, For the cuſtody of the Record it ſelf doth not appertain to the Coroners, but the Sheriff is to have the keeping thereof, and of the Exigent, which is the Sheriffs Warrant to Proclaim the Judgement, and which Record with the Exigent, the Sheriff is to return into the Kings Bench, &c. Dyer. 223. Finch. 116.

And the Sheriff ſhall have Counter Rolls with the Coroners, of all things belonging to the Office of Coroners, Stamf. 64. Fitz. Coron. 186. ſee hic cap. 100.

The forms of the Kings Writs for the chooſing of the Coroners and Verdurers: See in the Regiſter fol. 177. & Fitz. 163. 164.

The form of the Verdurers Oath: See.

The effect of the Verdurers Oath is to this purpoſe.

They are ſworn to maintain, and keep the Aſſiſes (ſc. the Orders and Ordinances) of the Foreſt, and to view, receive, and Inroll the Attachments and Preſentments of all manner of Treſpaſſes of the Foreſt, of Vert, and Venilon. Minſh. vide Raſtal tit. Foreſts. div. 16. & 21.

In the time of the Fence moneth, or Fawning of the wild beaſts of the Foreſt, at the Court of Swainmoote then holden, theſe Verdurers are the Judges of that Court, and are to direct all the other Officers of the Foreſt in their courſe, &c. Mr. Manwood. fol. 74.

At other times their Office is properly to attend the Vert, and to ſee that it be well preſerved and kept. Cromp. Author. des Courts 165.

Vert, this word taketh that name, *a viriditate*, of greenneſſe, and in Latin it is called viridis, whereof this word viridarius, a Verdurer someth, ſc. one who doth take the charge of the Vert. Manwood. fol. 37.

And the word Vert doth comprehend every thing that doth grow, and bear green leafs within the Foreſt, that may cover and hide a Deer in it, and more ſpecially ſuch Woods, Trees, or Buſhes as do bear fruit, which is food for the Deer in Winter (as Acorns, Apples, Crabs, Sloes, and Hawes, &c. Manw. 6. 33. & 35.

Alſo Proclamations are openly to be made by the Sheriff, &c. in his full County Court, in divers caſes.

1. Firſt upon receipt of the Kings Writ, for ſummoning the Parliament.

2. Upon receit of the Kings Writ for Levying the Expences of Knights of the Parliament.

3. In caſes of Utlary.

4. Upon Proceſſe againſt perſons Indicted, or Appealed, dwelling in a forein Country.

5. Upon a Writ de Excom. Capiendo.

6. In caſes of Riots certified into the Kings Bench.

7. Upon the Grand Diſtreſſe, in Writs of { Admeaſurement. / Peſne. / Ward.

See more fully for every of theſe, hic antea, cap. 102.

CAP.

CAP. 115.

Now concerning the Sheriffs Officers, ſcz. his Under-ſheriff, Clerks, Deputies, Bayliffs of Hundreds, and Gaolers.

I Will here firſt ſet down what ſecuritie is commonly taken by the High Sheriff from his ſaid Officers: And then certain general obſervations or rules concerning them all; And after I will treat more particularly of every of them by themſelves.

Firſt, it is meet and ſafe for the High Sheriff, to take good ſecurity for his Under-ſheriff, and other Officers, before he truſt them with their Offices: And for this, commonly the High Sheriff taketh Bonds and Covenants of the Under-ſheriff and his friends; As alſo of his Bayliffs, and Gaoler.

The form of an Indenture between the High Sheriff, and his Under-ſheriff.

W. 9. 10.

THis Indenture made, &c. between *R. O.* of in the County of *Cambridge* Eſquire on the one party; and *H. R.* of G. in the ſaid County Gent' of the other party, witneſſeth, that whereas the ſaid *R. O.* being by the Kings moſt excellent Majeſty appointed to be High Sheriff of the ſaid County of *Cambridge*, & of the County of *Huntingdon*, for this year to come, hath upon ſpecial affiance, confidence, and truſt, that he hath and beareth in and towards the ſaid *R. H.* promiſed and granted to the ſaid *R. H.* the uſe of the exerciſing of the Office of his Under-ſheriff of the ſaid Counties, together with all fees, profits, commodities, advantages, caſualties, allowances, and other emoluments, *Les Profits.* certain and uncertain whatſoever, to the Office of Under-ſheriffwick, belonging, or in any wiſe appertaining, that any (*quære* what theſe be, in particular, elſe they may much wrong the High Sheriff) Under-ſheriff of the ſaid Counties, hath heretofore juſtly and lawfully claimed or had, To have and enjoy during, and by all ſuch time as he the ſaid *R O.* ſhall be, remain, and continue High Sheriff of the ſaid Counties, this appointment or election not diſcharged. *In* conſideration whereof the ſaid *R. H.* covenanteth, granteth, and agreeth, and faithfully promiſeth for him, his heirs, executors and adminiſtrators, that he the ſaid *H. R.* his heirs, executors or adminiſtrators ſhall and will diſcharge, or otherwiſe ſufficiently ſave and keep harmleſſe, as well the ſaid *R. O.* his heirs, executors, and adminiſtrators, as alſo his and their, and every of their goods, chattels, lands, tenements, and hereditaments of, and from all, and all manner of troubles, vexations, ſutes, actions, informations, complaints, contempts, fines, forfeitures, amerciaments, penalties, pains, ſum and ſums of money payable, or leviable to, or for the Kings Majeſty, or any other perſon or perſons whatſoever, for any matter or thing to be done, in or about the ſaid Office. *And* of and from all, and all manner of loſſes, hindrances, and damages, that ſhall or may be lawfully moved, ſtirred, procured, commended, prohibited, *De ſaver harmleſſe generalment.*

Quære, if this be not contrary to the Sheriffs Oath Artic. 12. and contrary to the ſtat. ſee hic cap. 2. & 3.

proſecuted, happen or fall, or lawfully asked, demanded, or levied upon the ſaid *R. O.* his heirs, executors or adminiſtrators, or of, or upon his or their, or any of their goods, cattels, lands, tenements or hereditaments, for or by reaſon of the ſaid Office of Sheriff, either by non-ſuing, or unlawful returning, ſlow returning, or miſreturning of any precepts, writs, warrants, or proceſſe to the High Sheriff directed, or to be directed; or for by cauſe or means of any exceſſive or unlawful *Extortion.* extortion or exaction, or taking of any money, or other gain, or commodity for the ſerving or not ſerving of any ſuch Writs, Warrants, Precepts, or Proceſſe, or for or by reaſon of any miſdemeaner, miſuſing, or miſgovernment, negligence, lack of skill, or of ignorance that ſhall be in the ſaid *H. R.* in or about the doing, exerciſing, or executing of the ſaid Office of Under-ſheriff. *And* the ſaid *H. R.* for himſelf, Heirs, Executors and Adminiſtrators by theſe preſents doth further covenant and grant to, and with the ſaid *R. O.* his Heirs, Executors and Adminiſtrators, in like manner to diſcharge, or otherwiſe to ſave harmleſſe and indempnified as well the ſaid *R. O.* his Heirs, Executors, and Adminiſtrators, as alſo all their goods and cattels, lands, tenements, and *Eſcape.* hereditaments, of and from all manner of eſcapes, both wilful and negligent, of Traytors, Felons, and all other priſoners committed, or to be committed to his or their ſafe keeping, or charge, in breach of priſon, and of and from all fines, forfeitures, amerciaments, ſums of money, and penalties that he or they, or any of them ſhall or may incur, bear, pay, or ſuſtain, for any eſcape or breach of priſon, during all the time of his continuance in the ſaid Office of High Sheriff of his appoint-*A doner Attendance.* ment. *And* moreover the ſaid *H. R.* ſhall give attendance convenient and requiſite, upon the Kings Courts at Weſtminſter, upon the Judges of Aſſiſes and Juſtices of Peace, and other Commiſſioners and Officers within the ſaid County, upon whom the ſaid *R. O.* or the ſaid *H. R.* in reſpect of the ſaid Office of Sheriffwick ought by the Laws of this Realm to attend. *And* furthermore ſhall within one year next after the diſcharge of the ſaid *R. O.* from his ſaid Office, juſtly and truly make a perfect account in the Kings Eſchequer, or elſewhere, of all the *De faire ſon Account.* ſums of money, receits, and other things wherewith the ſaid *R. O.* ſhall or may be charged as Sheriff of the ſaid Counties of Cambridge and Huntingdon, and ſhall within the ſaid time or year deliver unto the ſaid *R. O.* his Heirs, &c. a ſufficient acquittance or *quietus eſt*: *And* it is further agreed upon by the ſaid parties to theſe preſents, that every one of the Bayliffs of Hundreds, and alſo other the Officers under the *Lour bailifs.* Sheriff, ſhall enter into ſufficient bonds by obligation, that they and every of them ſhall truely and diligently deal in, exerciſe and execute their Offices during the time aforeſaid. *And* if any ſhall refuſe to enter bond, or ſhall miſdemean himſelf in his or their ſaid Office, that then it ſhall be lawful to, and for the ſaid *H. R.* in his diſcretion to place another meet for that Office, in the room of ſuch perſon that ſhall refuſe to enter bond, or ſhall miſdemean himſelf, as is aforeſaid. In witneſſe whereof, &c.

The

Another form of Indenture between the High Sheriff and his Under-ſheriff.

West. Pl. 75. THis Indenture made, &c. between *F. S.* Sheriff of the Counties of *Cambridge* and *Huntingdon*, Eſquire, of the one partie, And *A. G.* of, &c. on the other party witneſſeth, that it is covenanted, &c. that is to ſay, The ſaid *F.* doth by theſe preſents ordain, conſtitute, depute and make the ſaid *A. G.* his Under-ſheriff in the ſaid Counties of *Cambridge* and *Huntingdon*. And to have, occupie, and enjoy the ſaid Office of Under-ſheriff there to the ſaid *A. G.* during all ſuch time as the ſaid *F.* ſhall continue and be in authority of the Office of the ſaid Sheriff of the ſaid Counties of *Cambridge* and *Huntingdon*, by vertue and authority of our ſaid Soveraign Lord the Kings Majeſties Letters Patents of the Office of Sheriff there to him directed, bearing date, &c. *And* alſo that the ſaid *F.* doth by theſe preſents graunt, &c. to the ſaid *A.* that he ſhall and may take and have during the ſaid term, all manner of fees, rewards, and profits lawfully to the ſaid Office of Underſheriff, (learn what theſe be,) or for ſerving, executing, or returning of any manner of Writs, Warrants, Precepts, or Proceſſe in the ſaid Counties of *Cambridge* and *Huntingdon*, belonging or appertaining. *And* the ſaid *F.* doth by theſe preſent grant, aſſign, and depute to the ſaid *A.* the lawful ordering, cuſtody, and government, of all and ſingular manner of Gaoles, Priſons, and of the Priſoners now, or hereafter to be therein, to be lawfully and duely ordered, kept, and demeaned, by the ſaid *A.* or his Deputie or Deputies, ſervant or ſervants, during the ſaid term that the ſaid *F.* ſhall have the ſaid Office, or the cuſtodie, order, or government of the ſaid Gaoles, Priſons, and Priſoners, by vertue and authority of the ſaid Office of Sheriff, and Letters Patents aforeſaid. *In* conſideration whereof, the ſaid *A.* doth by theſe preſents grant, &c. to and with the ſaid *F.* that he the ſaid *A.* and his Aſſigns, ſhall at all and ſingular time and times from time to time after the date of theſe preſents, conſerve, diſcharge, exonerate, ſave harmleſſe, and acquit the ſaid *F.* his Heirs, Executors, Adminiſtrators, and Aſſigns, and every of them, (and the ſureties of them and every of them) of, for, and from all and all manner of forfeitures, payments, and fines, pains, penalties, amerciaments, charges, loſſes, iſſues, damages, incumbrances, and demands whatſoever in any wiſe, in any Court or elſewhere, to be ſet, aſſeſſed, paid, or ſuſtained, ſuffered, or had to our ſaid Soveraign Lord the Kings Majeſty, his Heirs, and Succeſſors, or to any other perſon or perſons in any wiſe, for, or upon any eſcapes, executions, or returns of Writs, Commiſſions, Privie Seals, Proclamations, Proceſſe, Precepts, Seals, and Warrants, by any ways, manner, or means to, or upon the ſaid *F.* for, upon, or under the ſaid Office of Sheriff in any wiſe directed, named, or had for any Act, matter, default, office, or thing to be committed, done, neglected or ſuffered, perpetrated, or had by the ſaid *A.* or any of his ſaid ſervants, miniſters, deputies, or aſſigns, during the time that the ſaid *A.* ſhall continue in his ſaid authority or Office, or any of them: *And* alſo the ſaid *A.* in conſideration aforeſaid, doth by theſe preſents grant, &c. that he the ſaid *A.* ſhall duely, pay, enter into, make perfect, finiſh, acquit and diſcharge, for, and in the behalf of the ſaid *F.* in the Kings Court, now commonly called the Eſchequer, and elſewhere, all and ſingular, and all manner of profits, rents, dets, duties,

Les Profits.

Le Gaole.

De ſaver harmleſſe.

De faier accompt.

duties, and demands, accounts, costs, charges, fees, recognisances, and bonds, for, and upon the said Sheriff, or any his sureties, or by reason or means of the said Office of Sheriff, of, and in the said Counties of *Cam'* and *Hunt.* or of any Officer or Minister of the said Sheriffs Office in any wise due or demandable, during the time that the said *F.* shall have the said Office of the said Sheriff of the said Counties of *C.* and *H.* or to be accountable thereof: *And* that the said *A.* shall duely, lawfully, and in convenient time, by himself, or his Assigns, bring unto the said *F.* his Heirs, Executors, or Administrators, his, and their lawfull acquitance and discharge for the accounts and duties of the said Sheriffs Office of the said Counties of *Cam'* and *Hunt.* for the time that the said *F.* shall have been Sheriff there by the said Letters Patents. *Also* the said *A. G.* doth by these presents grant to, and with the said *F.* that the said *A.* shall well, and worshipfully, make, provide, sustain, and maintain at all and singular times (during the time that the said *F.* shall have the said Office of Sheriff of the said County of *C.* and *H.* by force or vertue of the said Letters Patents) convenient and competent Meat, Drink, Lodging, Food, Sustenance, and Entertainment of the Justices of Assises, Justices of Gaol Delivery, and the Clerk of the Assises, and for all and for every of their Clerks, Ministers, and Servants, and for the Horses and Moiles of them and every of them, and for all other attendants at, and about the said Justices of Assise or Gaol Delivery, at, or within the said Counties of *Cam'* and *Hunt.* during the time and times of their Assises, at, and by the oversight and appointment of the said *F.* or such other person or persons as the said F. shall thereunto nominate and assign. *Provided* always, and it is granted and agreed by these presents between the said *F.* and *A.* that the said *A.* or any other person in his behalf shall not make or return any other Pannell, Jury, or Enquest, for, in, or upon any Writ of *Venire facias*, or of any other Processe, pursued, directed, or had, during the time of the said Sheriff of the County of *Cam'* and *Hunt.* out of any of the Kings Majesties Courts, commonly called the Chancery, the Kings Bench, Common Place, or Eschequer, unlesse the same Pannel, Jury, or Enquest shall be confirmed with the hand of the said *F.* or of some other party that he shall nominate or appoint. *Nor* that he the said *A.* nor any other person in his behalf shall in any wise do, or cause to be done, without the special License of the said *F.* first obtained and plainly had done or appointed, any Act, matter, or any thing upon any Writ, Commission, Action, Presentment, Judgement, Indictment, Processe, or sute that in any wise, manner, or means shall be, for, or against any of the Earls of, &c. or any of them, or, for, or against any other person or persons, that is, or hereafter shall be known or declared to the said *A.* by the said *F.* to be his friend. *And* it is also provided and agreed by these presents between the said *F. S.* and *A. G.* that the said *F.* shall, and may make, ordain, constitute, and appoint from time to time, during the time of his Office by the said Letters Patents, such persons which during that time shall have, occupy, and enjoy the two Baylywicks, and Officers of Bayliffs, of, and in the Hundreds of *R.* and *C.* and either of them, with the Appurtenances in the Counties of *Cam'* and *Hunt.* aforesaid, and that the same persons shall have, take, occupy and enjoy the said Baylywicks, and either of them, together with all, and singular manner of profits, commodities, and advantages, with the Appurtenances appendant to the same Baylywicks, or either of them in any wise concerning, growing, belonging, or during the time, over and besides that shall be to the Kings Majesty, any thing in these presents contained to the contrary

De procure son discharge.

De entertain les Judges, &c.

Pur Retorne les Iurors, ove le privity del vic'.

Et executor proces, &c.

Lour Baylifes.

trary in any wiſe notwithſtanding. *And* the ſaid *A.* doth moreover grant by theſe preſents to the ſaid *F.* that the ſaid *A.* and his aſſigns ſhall in due and convenient time, as ſhortly and conveniently as may be after the time of the ſaid Office ended, account, and declare to the ſaid *F. S.* or his Aſſigns, at the ſaid Mannor of, &c. the true value and Rent, of all and ſingular Rents, Revenues, Duties, and Forfeitures, due to be payed, and then levied or leviable to the Kings Majeſties uſe or behalf within the Counties of *C.* and *H.* for, upon, in, or by the ſaid Office of Sheriff there, during the time that the ſaid *F.* was, as is aforeſaid Sheriff there, and ſo much of the Rents, Revenues, Duties, and Forfeitures that the ſaid *A.* or his Aſſigns ſhall pay, or cauſe to be payed then to the ſaid *F.* as the ſame *A.* or any other perſon to his uſe then hath received, and all the reſidue of the ſaid Rents, Revenues, Duties, & Forfeitures there, which conveniently ſhall be levied, the ſame ſhall cauſe to be payed to the ſaid *F.* or his Aſſigns ſo ſhortly and ſpeedily as may be, after that time they ſhall be conveniently levied and gathered there: *And* the ſaid *A.* doth by theſe preſents covenant and grant to, and with the ſaid *F.* &c. that he the ſaid *A.* his Executors, and Aſſigns, ſhall within fourty days next after the ſaid accounts for the ſaid Office of the Sheriff of the Counties of *C.* and *H.* finiſhed or determined, pay, or cauſe to be payed well and truely to the ſaid *F. S.* his Executors or Aſſigns, all manner of allowances, profits, commodities, and advantages that in any wiſe ſhall be admitted, deducted, or allowed in the ſaid account or accounts, or by any part thereof in the ſaid Exchequer, for the diet of any the Juſtices of Aſſiſes, or Gaol, or any of their Clerks ſervants or attendants in the ſaid County, or for any ſummons of *præcipe*, or of any green Wax, or of any ſuch like matter, or thing in the ſaid Shires of *C.* and *H.* *And* alſo the ſaid *A.* doth by theſe preſents grant to the ſaid *F.* that he the ſaid *A.* at leaſt in one day in every of one and twenty days, during the time that he ſhall be Underſheriff, as is aforeſaid, and perſonally be in or near unto the ſaid Counties of *C.* and *H.* ſhall come thence unto the ſaid *F.* and on that one day, utter and declare the ſtate of the ſaid Counties of *Cam'* and *Hunt.* and the affairs concerning the ſaid Office, with the Appurtenances thereof. *And* that alſo the ſaid *A.* with all his Officers and Miniſters, and power of the ſaid County, ſhall duely and diligently attend to the ſaid Office, if any War, Rebellion, or other notable matter or occaſion, during the time of the ſaid Office ſhall ariſe, or be in the ſaid County or thereabouts: *And* alſo that the ſaid *A.* ſhall well and diligently, honeſtly, and juſtly occupy, ſerve, and execute the ſaid Office of Underſheriff of the ſaid County, and honeſtly behave himſelf in all points, during all the time that the ſaid *F.* ſhall continue, and be high Sheriff of the ſaid Counties of *C.* and *H.* by vertue of the ſaid Letters Patents, and nothing done by himſelf, or any other perſon or perſons in any wiſe concerning the ſaid Office of Sheriff or Underſheriff of the ſaid Counties of *C.* and *H.* which ſhall be to the diſworſhip of the ſaid *F.* *And* alſo that the alterations of matters, articles, and things in theſe preſents in any wiſe mentioned or contained, may, and ſhall be reformed, and had at any time from time to time, by the learned Counſel of the ſaid *F.* for the better and more perfect diſcharge and ſaving harmleſſe of the ſaid *F.* his Heirs and Executors by theſe preſents, by, and in all things to obey, perform, and fulfill. In witneſſe whereof, &c.

De Account' al vic.

De attend' le vic' cheſcun 3. ſemaine.

Poſſe Comitatus.

Bene ſe gerere.

An-

Another form of Indenture of Covenants, &c. See my other book, & hic fol. 209. & ſcribe hic.

Bonds. THe Bonds are commonly taken of the Under-ſheriff and his Sureties, for the performance of theſe former Covenants: And they are ordinarily as all other bonds are for the performance of Covenants: And they are in this matter following, or the like.

A Condition to perform Covenants.

THe Condition, &c. That if the within bounden *Th. F.* do well and truly hold, perform, obſerve, fulfill, and keep all and ſingular Covenants, Grants, Articles, Payments, Promiſes and Agreements, which on the part and behalf of the ſaid *T. F.* his Heirs, Executors, &c. or any of them are to be holden, performed, obſerved, fulfilled, or kept, contained, written, declared, or ſpecified in one pair of Indentures bearing date, &c. made between the ſaid *T. F.* of the one party, And the within named *T. T.* of the other party, according to the tenure, purport, true intent, and meaning of the ſaid Indentures, That then, &c.

A Condition to paſſe an account, to procure a diſcharge for a Sheriff.

THe Condition of, &c. that if the above bounden *T. F.* his Heirs, Executors, and Adminiſtrators, do make a true and perfect account, of, and for the above-named *T. T.* his Heirs and Executors, in the Exchequer of our Soveraign Lord the King, and the Heirs and Succeſſors of the ſaid King, of, for, and upon all iſſues, charges, ſum and ſums, which be, or ſhall be charged or demanded, of, or upon the ſaid *T.* as late Sheriff of the ſaid County, and do get and procure a ſufficient *quietus eſt* thereof, for the ſaid *T. T.* his Heirs and Executors. And moreover, do well and truely diſcharge, ſave, and keep harmleſſe the ſaid *T. T.* his Heirs, &c. againſt our ſaid Soverein Lord his Heirs and Succeſſors, and all other perſon and perſons, of, for, and concerning the ſaid Office of Sheriff, and all the receipts and charges thereof, That then, &c. W. Pl. 215.

A Condition for a Bayliff to enter into, to the Sheriff.

THe Condition, &c. That whereas the above named Sir *B. T.* at the ſpecial inſtance and earneſt intreaty of the above bounden *I. P.* hath authoriſed and appointed the ſaid *I. P.* to be one of his Bayliffs within the County of *C.* aboveſaid, and in more particular hath committed to his charge the Bayliwick of the hundred of *M.* and *B.* if therefore the ſaid *I. P.* and all ſuch perſons, &c. for and about the executing of ſuch things as ſhall be given him in charge to do and execute as Bayliff of the hundred, do juſtly, &c. Execute his ſaid Office according to the effect and intents of ſuch Warrants and Precepts as ſhall be directed unto him, and come to his hands from the above named Sheriff, or from his Underſheriff to be executed, and W. 12.

ſhall

ſhall and do upon the view of every Warrant upon mean proces from the ſaid Sheriff, take ſufficient bond with two ſureties for the appearance of the defendant arreſted, according to the Statute in that caſe made and provided. And ſhall ſafely convey and deliver every ſuch bond uncancelled unto the ſaid Sheriff or his Under-ſheriff, before ſuch time as the Proces whereupon the ſaid Warrant is made is returnable. *And* alſo at all times, and from time to time, during the continuance of the ſaid Sheriff in his Office of Sheriff of the ſaid County, be ready and attendant both upon the ſaid Sheriff, and upon his Under ſheriff, as well at every Aſſiſes and Seſſions, as alſo at every County Court to be holden, &c. then and there to execute his ſaid Office as appertaineth; *And* alſo ſhall well and truely pay, or cauſe to be payed to the ſaid Sheriff or his Under-ſheriff, at the Feaſts of Eaſter, and Saint *Michael* the Archangel now next coming after the date of theſe preſents, all and every ſuch Sum and Sums of money as hath been accuſtomed yearly to be payed to the Sheriff of the ſaid County for the Kings Majeſty out of the ſaid hundreds upon the account of every Bayliff of the ſaid hundreds, commonly called, Sheriffs Torne money: *And* do in like manner before the ſaid Feaſt of Saint *Michael*, collect and gather of the Inhabitants within the ſaid hundreds, all ſums of money due to his Majeſty, upon the Summons and Schedules of the green Wax, a ſufficient Warrant being in convenient time delivered unto him, to that end and purpoſe, and do accordingly pay the ſame to the ſaid Sheriff, or to his Under-ſheriff, within one moneth next after he hath gathered and collected the ſame, without convin or further delay. *Sheriffs Torne money.*

Un auter Preſident del grt del Office de South vic' de avoid le danger, ore, de perjury, &c.

THis Indenture made, &c. Between *I. S.* Sheriff of the County of C. &c. of the one part, And *B. C.* &c. of the other part, witneſſeth that the ſaid *I. S.* upon the ſpecial affiance, truſt and confidence that he hath in the ſaid *B. C.* And of his faithful circumſpection, care and due obſervance hereafter to be ſhewed and beſtowed to me, in the Office and place of High Sheriff of the County of C. for and during all the time that I the ſaid *I. S.* ſhall be in the ſaid Office, Do by theſe preſents ordain, conſtitute, &c. as in fol. 531. And profits lawfully to the Office or place of Under-ſheriff belonging or appertaining. ib. In conſideration whereof the ſaid *A. B.* doth by theſe preſents, for himſelf, his Heirs, Executors and Adminiſtrators, covenant and grant to and with the ſaid *I. S.* his Heirs, Executors, &c. That he the ſaid *A. B.* and his Aſſigns ſhall, &c.

1. Save the ſaid High Sheriff, &c. harmleſs.
2. To make Account in the Exchequer.
   And procure the High Sheriffs diſcharge.

} Ut hic fol. 529, 530, 531, 532.

3. To return Juries, with the privity of the Sheriff. Ut f. 532.

4. To execute no proces, &c. of weight, ſc. without the Sheriffs privity. } fol. 532.

Mz adviſe de ceſte Covent.

5. To

5. To Accompt to the Sheriff, And to attend the Sheriff. } 531. 533.

6. To be ready to ayd the Sheriff, &c. 7. For his good behaviour, in his Office. } fol. 533.

8. To take or uſe no Extortion. 9. To give attendance at the Kings Courts. } fol. 530.

Another Condition to exerciſe a Bailiwick.

THe condition, &c. That if the within bounden *I. A.* ſhall well and truly exerciſe and occupie the Office of the Bailiwick of the Hundred of Ch. under the within named *E. T.* being Sheriff of the ſaid County of Cambridge, and be ready and attendant to the ſaid Sheriff and his Deputy, at all times when he ſhall be required in executing his ſaid Office of Sheriffwick, and diſcharge, and ſave harmleſſe the ſaid Sheriff againſt our Soveraign, &c. and all other perſons for executing of all manner of Proceſſe, Precepts, Warrants, and Commandments, to be directed, executed, and done by the ſaid *I.* and of all priſoners as ſhall be in his cuſtodie: *And* well and truly content and pay to the ſame Sheriff, his Executors or Aſſigns, all the iſſues, revenues, and profits of the ſaid Hundred, whereof the certainties amount to the ſum of four pounds, by the confeſſion of the ſaid Bayliff, to be paid duely at the Feaſt of Eaſter, &c. And alſo levie, content, and pay to the ſaid Sheriff, all ſuch green wax, pipe ſilver, and iſſues, as the ſaid Sheriff ſhall be charged withall within the ſaid Hundred, and as ſhall be eſtreated out to the ſaid Bayliff to gather, to be paid to the ſaid Sheriff afore the ſaid Feaſt of, &c. That then, &c. W. Pl. 227.

Iſſues, &c. del hundred.

A Condition for a Gaoler to enter into for the ſafe keeping of his Priſoners.

THe Condition, &c. That whereas the within named Sir H. W. at the ſpecial inſtance and requeſt of the within bounden W. W. hath conſtituted and appointed the ſaid W. W. to be his Keeper of all ſuch priſoners as ſhall be arreſted or attached by any manner of Writ, Warrant, or Precept made, or to be made, by, or in the name of the ſaid Sir H. W. or by, or in the name of I. W. his Under-ſheriff; If therefore the ſaid W. W. his Deputie or Deputies, Aſſignee or Aſſignees, or any of them ſhall and do well and ſafely keep all ſuch priſoners as ſhall be committed to him or them, or any of them, and therein ſhall ſave and keep harmleſſe and indempnified the ſaid Sheriff, his Heirs, Executors, and Adminiſtrators, at all and every time and times hereafter, of, and from all, and all manner of eſcapes, of all manner of priſoners that ſhall be committed to the cuſtody and ſafe keeping of the ſaid W. W. or left under the cuſtody or charge of any of his Deputies or Aſſignes: And of and from all, and all manner of judgements, executions, fines, charges, troubles, and incumbrances whatſoever, which ſhall or may hereafter grow or happen to be tared, impoſed, eſtreated, or levied upon, of, or againſt the ſaid Sheriff, as Sheriff

of

of the County aforeſaid, for and by reaſon of any ſuch eſcape or eſcapes as aforeſaid: And alſo if the ſaid W. W. his Deputie or Aſſignée ſhall not diſcharge or ſet at liberty out of his or their cuſtody and ſafe keeping, any priſoner or priſoners which now are, or that hereafter ſhall or may be by the ſaid ſheriff or by his Underſheriff or Deputy, or by any of their Bailiffs, taken, committed, delivered, or left, in the cuſtody of the ſaid W. W. his Deputie or Servant, without the ſpecial warrant in writing under the hand and ſeal of the Officer of the ſaid ſheriff in that behalf firſt had and obtained, that then, &c.

Concerning theſe or the like Bonds to be taken by the Sheriff of his Officers, See hic antea cap.

27. El. c. 12. P. Sheriffs 32. 33.

Every Underſheriff before he intermeddle with the uſe or exercile of the ſaid Office, and all and every Bailiff of Franchiſe, Deputie, and Clerk of every Sheriff, and Underſheriff, and all and every Bailiff of Hundred, and every other perſon and perſons which ſhall have authority, or take upon him to impannel or return any Enqueſt, Jurie, or Tales, or to intermeddle with the Execution of Proces, in or out of any Court of Record, before he or they intermeddle with execution thereof, ſhall receive and take two corporal oaths upon the holie Evangeliſt, The one for and concerning the Kings ſupremacy, in ſuch manner as is expreſſed by the ſtatutes made 1. Eliz. cap. 1. & 5. Eliz. cap. 1. *Le ſerement.*

The other oath, for and concerning the true exerciſing of their Office, the form whereof is as alloweth.

I *Henry Sl.* ſhall not uſe or exercile the Office of Underſheriff, (Bailiff, Deputie, or Clerk, or other ſuch words convenient for the office, or place in which the partie which taketh the oath is to be exerciſed in) corruptly during the time that I ſhall remain therein, Neither ſhall or will accept, receive, or take, by any colour, means, or deviſe whatſoever, or conſent to the taking of any manner of fee, or reward, of any perſon or perſons, for the impannelling or returning of any Enqueſt, Jury, or Tales, in any Court of Record, for the King, or betwixt party and party, above two ſhillings, or the value thereof, or ſuch fees as are allowed and appointed for the ſame by the Laws and Statutes of this Realm, But will according to my power truely and indifferently with convenient ſpeed impannel all Jurors, and return all ſuch Writ or Writs, touching the ſame, as ſhall appertain to be done by my duty or office, during the time that I ſhall remain in the ſaid office, So help me God. *Le ſerement concernant loffice.*

27. El. c. 12. Theſe oaths are (by the ſaid Underſheriff, Bailiffs, and other Officers) to be taken before the Juſtices of Aſſiſe, or one of them, of the ſame circuit, or before the Cuſtos Rotulorum, or two Juſtices of the Peace (one of them being of the Quorum) of the ſame Countie where of the ſaid Underſheriff, Bailiff, or other Officer ſhall be.

27. El. c. 12. If any of the ſaid perſons limited to take the Oath aforeſaid, do take upon him to impannel, or return any Enqueſt, Jury, or Tales, or to intermeddle with the execution of Proces, not having before taken the oaths aforeſaid, every ſuch perſon ſhall forfeit fortie pounds, the one moitie to the King, the other moitie to him that will ſue for the ſame.

27. El. c. 12. If any Underſheriff, or other perſon here above mentioned in this Act, ſhall do or commit any act or acts contrary to the oaths aforeſaid, or either of them, or contrary to the true intent and meaning of this Act, every ſuch perſon ſo offending ſhall forfeit for every ſuch of-

fence to the party or parties grieved, his, or their treble damages.

All the ſeveral forfeitures before mentioned, ſhall or may be recovered in any of the Kings Courts of Record by action of debt, bill, plaint, or information, in which ſute no wager of Law, Eſſoin, or Protection ſhall be allowed. 27. El. 12.

Alſo the Judges of Aſſile, and Juſtices of Peace in their open Seſſions, may hear and determine the offences aforeſaid, upon preſentment, information, or indictment, and upon conviction of the offendors may award execution (for to levy the forfeitures) by Fieri facias, Attachment, Capias, or Exigent. 27. El. 12.

Alſo the head officer of the place if it be a Town Corporate, wherein ſuch bayliff, or other under-officer ſhall be, may take the ſaid Oaths of ſuch officers, before they ſhall, or may exerciſe their ſaid offices. 27. El. 12.

Oath of allegiance. Alſo by the ſtatute made 7. Jac. Regis cap. 6. every Officer or Miniſter of Juſtice (within which words the Undersheriff, Bayliff, Sheriffs Clerk, and Deputies ſeem to be comprehended) is to take the Oath of Obedience or Allegeance, if they be of the age of 18. years or above, and that it be lawfully tendered to them. 7. Jac. 6.

Pur colleller le ſhire amercements. Bayliffs and other the Sheriffs Officers ſhall be ſworn by the Juſtices of Peace, that they ſhall gather no more of the Shire Amercements than is forfeited, and contained in their eſtreats ſealed by the ſaid Juſtices. See hic antea tit. County Court fol. 11. H. 7 c. 15.

Ne ſerra Atturney. No Undersheriff, Sheriffs Clerk, Sheriffs Receiver, nor Sheriffs bayliff ſhall be Atturney in any of the Kings Courts during the time that he is any ſuch Office with any Sheriff; And the Sheriff is bound to have a care hereof, and to prevent the ſame, as well by the ſtatute as by his oath. 1. H. 5. c. 4.

Not above one year. No Undersheriff, nor Sheriffs Clerk ſhall abide or tarry in his Office above one year (except the Undersheriff, and Officers within London, &c. See infra) upon pain to forfeit two hundred pounds yearly, as long as ſuch perſon ſhall occupy ſuch Office contrary to the effect of the ſaid ſtatute; and every man which will may ſue for the ſame. See hic antea fol. 42. E. 3. c. 9. 23. H. 6. c. 8. 6. H. 8. 18.

Alſo every Pardon made for ſuch offence ſhall be void; beſides the high Sheriffs Oath ſeemeth to bind him from having ſuch an Undersheriff.

The miſchief. The miſchief of ſuch Officers continuing long in their Office, or interchanging out of one of the Officers into another, is obſerved (in the Preamble of another ſtatute made primo Hen. 5. c. 4.) to be, that the Kings liege people durſt not purpoſe and complain of the Extortions, and oppreſſions done to them by the Sheriffs Officers (that is to ſay by Undersheriffs, Sheriffs Clerks, Bayliffs, and Receivers) by reaſon thereof; and therefore it was by that ſtatute ordained, That Sheriffs Bayliffs ſhould not be in any ſuch Office by the ſpace of three years next following: But quære for the uſe hereof; for at this day in moſt places Sheriffs Bayliffs do continue in their ſaid Offices from year to year, for divers years together: And alſo Undersheriffs, and Sheriffs Clerks in many places alſo do continue in their ſaid Offices many years together, interchanging from the one into the other; By reaſon of which continual being, and continuing in the ſaid Offices, the Undersheriffs, Sheriffs Clerks, and Bayliffs, grow ſo cunning in their ſeveral places, as that they are able to deceive, and may well be feared that many of them do deceive both the King, their high Sheriff, and Countrey. 1. H. 5. c. 4.

Bailiffs ne ſerra deins 3. ans.

And yet the Undersheriff, and all other Officers within the Citie of London, as alſo the undersheriff, and all other Officers of Sheriffs, within 23. H. 6. c. 8. 1. H. 3. c. 18.

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in the Shire or County of the Town of Briſtow, may continue and occupy their ſaid offices from year to year, without any danger or forfeiture, notwithſtanding the former ſtatutes of 42. E. 3. 9. and 13. H. 6. 8.

23. H. 6. ca. 8. Alſo ſuch Counties in which any perſons were inheritable to the office of ſheriff at the time of the making of the ſaid ſtatute of 23. H. 6. (viz. 25. Febr. anno Domini 1444.) And all Letters Patents before that time made to them of the office of Sheriff, Undersheriff, and Sheriffs Clerk, are excepted out of the ſaid ſtatutes.

5. E. 4. 3. Br. Officer 24. & 33. Note, that the act or deed of the Undersheriff, or his Deputy, in the name of the ſheriff, ſhall charge the ſheriff; and for their act the ſheriff himſelf ſhall be amerced and none other. 8. H. 4. 20. Accordant. Dic hic *Vic' amerce pur defaults ſes officers.* antea fol. 69. 70.

Marſh port action ſur le caſe vers Aſtry le South vic. de Hertford, & *count* quod cum ipſe *avoit proſecute un br. de Entree en le poſt vers un C. direct al vic. de* Hertf. *que il luy Summoner d'app. devant les Juſtices, &c. Et que il deliver le dit breif al dit Aſtry, & done a luy ij. s. per ceo Executer, & licet le dit Aſtry voit Summon le dit. C. uncar il ne retorne le bre. avant dit al damage le Plt. de xij. l. Le deff. plede Rien Culp. & fuit trove enconter luy, per que* Coke *en arreſt de Indgement alledge que l'action ſerra port envers le High Sheriff, & nëy vers le South vic. & per ceo il vouch.* 21. E. 3. 43. & 19. H. 6. *que l'action ſerre port vers la vic. que ne Retorne le bre. &c. Iſſint que per Non feſanz d'un choſe le Haut vic. ſerra puny, Et le South. vic. per misfeſance. Mr. Gawdy & Clinch contr. car l'action eſt port per le fauxity que eſt ſolemt le act del South vic. intant que il priſt largent & ne retorne le bre. Et auxi le South vic. eſt ore Officer in Court entant que il eſt Iurus. Et Clinch dit, ſi un Clerke miſenter un Rol on Record, le Cheiffe Clerk ne ſerra puny per ceo, Iſſint le Haut Steward ne ſerra puny per le miſdemeanour on male feſanz del South Steward.* H. 32. Eliz.

14. E. 3 c. 10. Co. 4. 34. And for their Bayliffs, it is parcel of the Sheriffs Oath to take no Bayliff, but ſuch as he will anſwer for. And ſo for the Gaolers or Keepers of the common Gaol and Priſon of the County, the Sheriffs muſt put in ſuch Gaolers or Keepers for whom they will anſwer; for

Lam. v. v. 5. & Weſt M. 1. for if there be an eſcape of a felon voluntarily ſuffered by the Gaoler, the Sheriff may be indicted of Felony for the ſame as it ſeemeth. And if an eſcape ſhall be ſuffered by the Gaoler, or other officer, of a Priſoner who is in upon an Execution, the Sheriff ſhall be charged for the whole Debt.

The Undersheriff.

Co. 9. 49. The Undersheriff in ancient time was called Seneſchallus vicecomitis, and in the ſtatute of Weſtminſter 2. cap. 39. is firſt called Undersheriff, and in the ſtatute of 11. H. 7. ca. 15. he is called Undersheriff, or the ſhire clerk, or the clerk of the County, Co. 9. 49. ſee hic cap. 1. & Minſh. verbo ſhire clerk.

And yet the word ſhire clerk is ſometimes taken to be the undersheriff; and ſometimes it is uſed for a clerk in the County Court, Deputy to the Undersheriff.

These Undersheriffs have at this day to them committed by the high Sheriff the whole, or moſt part of the exerciſing and executing of the office of the high Sheriff, and may be called the Sheriffs gene-

20. H. 7. fol. 12. b. ral Deputy, (ſc. in matters concerning their miniſterial office.) And accordingly by the book 20. Hen. 7. the Undersheriff is ſaid to be but the

high Sheriffs Deputy or Bailiff, and one that useth and occupieth the place or Office in the right of the high Sheriff, and doth all things in the name of high Sheriff.

If it shall come in issue whether he that made the array be Undersheriff or not, this shall be tried by the Countrey, and not by examination of the Officer, and the array impannelled and returned by the Undersheriff in the name of the Sheriff shall bind the Sheriff. 8. H. 4. 10. 20. Br. Officer 33.

And if a Return made by the Undersheriff be denied, that shall be tried by the Undersheriff, and the high Sheriff cannot disavow the same, if he confesse him to be his Undersheriff. Co. 9. 31.

If any Undersheriff make a Return whereupon the Sheriff shall be amerced, there the high Sheriff shall be amerced, for the Return is made expresly in his name. But if it be a false Return whereupon an action of deceit lieth, in that case it may be brought against the Undersheriff. Dr. & St. 134.

The substance of this Oath, is, for the true, speedy, and indifferent returning of Writs, and Impannelling of Juries, without taking above the Fees allowed.

Their Deputies.

In Courts at Westm.

EVery Sheriff shall yearly make a Deputy of Record in every of the Kings Courts, of his Chancery, the Kings Bench, the Common Place, and in the Exchequer (before that they shall Return any Writs) to receive all manner of Writs and Warrants to be delivered them. 23. H. 6. c. 10.

See hic antea fol.

These Writs (as it seemeth) are delivered of Record in Court, to the Sheriffs Deputy, and thereupon an Entrée is made thereof in this manner: Memd. quod Justic. Dñni Regis hic, tali die, isto eodem termino deliberavert. *J. D.* deputat. vic. Com. præd. quoddam breve Dñni Regis nunc clm. eidem vic. direct. in forma juris exequend. Quod quidem bre. idem Deput. at hic in Curia aperuit, Cujus quidem brevis tenor sequitur in hæc verba. *Carolus, &c.*

Every Sheriff of the twelve Counties in Wales, and of the Counties of Lancaster, Chester, and the Citie of Chester, shall have a sufficient Deputy in the Kings Bench and Common Place, to return all Writs directed to such Sheriff. 1. Ed. 6. c. 10. 5. Ed. 6. c. 26.

The Bishop of Durham, and during the vacation of the said Bishoprick, the Chancellor of the said County Palatine for the time being, shall have one sufficient Deputy at the least, in the said Courts of the Kings Bench and Common Place, to receive all Writs of Proclamation directed to such Bishop or Chancellor. 31. El. c. 9.

Every Sheriff, as also the Bishop or Chancellor of Durham making default herein, shall lose to the party indammaged treble damages, and besides shall forfeit fourty pound, the one half to the King, and the other moity to him that will sue for the same. 23. H. 6. c. 16. 2. E. 6. cap. 10. 5. Ed. 6. 26. 31. El. 9.

Every Sheriff of any Shire (being no Citie, nor Town made Shire) at his first County day, or within two moneths next after he hath received his Patent of his Office of Sheriffwick, shall depute, appoint, and Proclaim in the Shire Town within his Baylywick, four Deputies at the least, dwelling not above twelve miles one distant from another (within the County where he is Sheriff) upon pain that every Sheriff for every moneth that he shall lack such Deputy or Deputies shall forfeit for every such offence five pounds. 1. & 2. Ph. & Ma. cap. 12.

4. Deputies pur faire Replevies.

Every of the said Deputies so appointed, and proclaimed, may in 1. & 2. Ph. & M. cap. 12.

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the Sheriffs name make Replevies, and deliverance of diſtreſſes, in ſuch form and manner as the Sheriff may, and ought to do.

22. H. 7. f. 37. The Sheriff may make his Undertheriff, Bailiff, and Deputies without any deed or writing, by Conesby, Brudnell, and Tremaile. *Sans fait.*

Where the Sheriff cannot make a Deputy: See hic.

CAP. 116.

Their Bayliffs of Hundreds.

THe Bayliffs of Hundreds, called alſo Bayliffs Errants, and in our Law, or vulgar Latin called Ballivi Itinerantes (id eſt going hither and thither in the County to ſerve or execute Writs, to ſummon the Aſſiſes, the Quarter Seſſions, and the like) are made and appointed by the high Sheriff.

And theſe Bayliffs would be ſuch manner of perſons, as do know each mans perſon, and Land, in the Hundred, and their ability to ſerve upon Enqueſts, that ſo they may the better ſummon, or diſtreyn them to appear, &c. when they ſhall be appointed.

But for that Sheriffs may not let their Bayliwicks to ferm, therefore when they put in bailiffs they be but as under bailiffs to the King, and the Sheriff is the high Bailiff, and the other the Sheriffs ſervants, and therefore he ſhall anſwer for them if they offend in their Office. Dr. & St. 136.

14. E. 3. c. 9. Sheriffs ſhall appoint ſuch Bailiffs for whom they will anſwer. Vide hic. And for that the ſtatute is general, it ſeemeth that he ſhall anſwer as well for an untruth in any ſuch bayliff, as for an overſight. Dr. & St. fol. 135. *Bayliffs.*

And ſo ſhall thoſe Lords which have Hundreds and Wapentakes in Fee.

No Sheriffs bayliffs ſhall be Attorney in any the Kings Courts during the time he is in ſuch Office, Vide hic.

27. Eli. c. 12. The Sheriffs bailiffs are to take the Oaths appointed by the ſtat. of 27. Eliz. ſc. they are to be ſworn to the ſupremacy, and for the exerciſing of their Office. ſub pœna. 40. l.

And if they ſhall commit any act contrary to their ſaid Oaths, they ſhall loſe treble damages, &c.

The form of this laſt Oath. See hic cap.

But ſpecial bayliffs to ſerve Proceſſe, are not to take the ſame Oaths by force of the ſaid ſtatute of 27. Eliz. Cromp. 76.

1. H. 5. c. 4. Sheriffs Clerks nor bailiffs being one year ſhall not be in any ſuch office by the ſpace of three years after, or next enſuing (except the bayliffs of thoſe Sheriffs which have inheritance in their Sheriffwicks) quære for the uſe hereof at this day.

14. E. 3. c. 9. The Sheriff ſhall have in his County but one bayliff errant onely: See the ſtatute of 14. Ed. 3. 9. and quære of the validity of this ſtatute this day: For theſe bayliffs errants, called in our Law or vulgar Latin Ballivi Itinerantes, (id eſt, going hither and thither in the County to ſerve Writs, and ſuch like) are the bayliffs of the Hundred; And are made, and appointed by the ſheriff.

Theſe Bayliffs of Hundreds ſhall be true and credible perſons, and ſhall have ſufficient Lands in the ſame ſhire whereof to anſwer the King

King and his people, in caſe that any man ſhall complain againſt them, and ſo that they ſhall not need to uſe extortion. 9. Ed. 2. Lincoln. & 2. Ed. 3. cap. 4. 4. Ed. 3. cap. 9. 5. Ed. 3. c. 4. & 14. Ed. 3. cap. 9.

If the ſheriff ſhall chuſe any man to be his bayliff of any Hundred or Wapentake, who hath not ſufficient Lands in the ſame County (according to the ſtatutes of Weſtm. and of 4. & 5. Ed. 3.) a Writ ſhall be ſent unto the ſheriff, commanding him to diſcharge and remove ſuch bayliff, and to chuſe a new bayliff in the others room; and hereupon any man may have an Alias, Pluries, and an Attachment againſt the Sheriff, if he ſhall not do according as he was commanded by ſuch Writ: The form of which Writ you may ſee in Fitz. Na. Br. 164. & Regiſter fol. 178. So as upon ſuch a Writ the ſheriff may remove his bayliffs of hundreds which have not Lands or Tenements ſufficient within his County. Regiſter 178. Fitz. 164. b.

Note alſo that it is parcel of the ſheriffs oath, to take no bayliffs but ſuch as be true men, and of ſufficient eſtate, and ſuch as he will anſwer for, and to make them to take their oath for the due execution of their office.

And theſe bayliffs would alſo be ſuch, as do know each mans perſon, and Land, in the Hundred, and their ability to ſerve upon enqueſts; That ſo they may the better ſummon, or to diſtreyn them, &c. to appear when they ſhall be appointed.

Counties and Hundreds let to farm.

It ſeemeth that in antient times all the * Counties in England were aſſeſſed to a certain farm (ſc. were let by the King to every Sheriff at a certain farm) and then all the Hundreds and Wapentakes in the Sheriffs hands were again by them letten, and were alſo rated to their farm, which was an occaſion of great oppreſſion; whereupon it was firſt ordained, that the bayliwicks of Hundreds ſhould be leaſed and bayled by the Sheriff for a reaſonable Rent, ſo that the Bayliff need not to uſe extortion upon the people by reaſon of too outragious farm: and after by the ſtatute made 4. E. 3. cap. 15. it was ordained, that Sheriff ſhould let their Hundreds, for the old farm (and not above) to their bayliffs; and by another ſtatute made 14. E. 3. it was ſhortly after ordained, that Sheriffs ſhould keep their Hundreds in their own hands, or elſe ſhould let them upon the old Rent; But ſithence Sheriffs (by the ſtatutes made 23. H. 6. cap. 10. & 5. & 6. Ed. 6. cap. 16. as alſo by their Oaths) are reſtrained from letting to farm any of their Counties, or any of their baylywicks, Hundreds, or Wapentakes in any manner whatſoever. * Scz. the profits thereof. 2. E. 3. cap. 12. 9. E. 2. Stat. de vic' 4. E. 3. 15. 14. E. 3. ca. 9.

No bayliff of any Hundred ſhall Leaſe his Office to any other in farm or otherwiſe. Stat. de vic'. 9. E. 3.

Sworn.

The Execution of all Writs which come to the ſheriff ſhall be done by the Hundredors; ſc. by the bayliffs of hundreds, and ſuch as are known and ſworn in the full Counties, and not by others; if it be not by the open default or notorious diſturbance of the Hundredors, ſc. unleſſe the bayliffs of Hundreds will not, or cannot execute them. And then execution ſhall be done by other perſons meet and ſworn, ſee the ſtatute 9. Ed. 2. de vicecomitibus.

No diſtreſſe ſhall be taken, but by a bailiff ſworn and known; And if any other ſhall diſtrain and be thereof convicted, they ſhall yield damages to the party grieved, and alſo be puniſhed to the King. 13. E. 1. 73.

And ſo by the ſtatute 27. Eliz. cap. 12. No bayliff of any Hundred, nor other perſon ſhall take upon them to execute any Proceſſe, &c. before they be ſworn, ſee hic antea. fol.

And yet the common experience and practiſe at this day is, that ſpecial

cial bailiffs, or other perſons (being neither ſworn nor known officers) do execute ſuch Writs; And ſuch ſpecial bailiffs are often mentioned in our Books, as in 8. Ed. 4. 14. 21. H. 7. 37. Co. 9. 69. Br. *Monſtrance des faits* 117. And they ſeem to be the more allowed, for that they many times may and do execute the Kings proces, when ſuch bailifs as are known, cannot, in regard that ſuch as are in debt do uſually flie from them, &c.

Bailiffs of hundreds ſhall attend upon the Juſtices of Aſſiſes, Juſtices of Gaol delivery, and Juſtices of Peace in every of their Courts and Seſſions, (upon warning) See the ſtatutes 27. H. 8. 24. & 34. H. 8. 26. They ſhall alſo duely execute all Precepts and Warrants to them from the ſaid Juſtices directed for the miniſtration of Juſtice.

See more concerning bailiffs of hundreds hic antea tit. County Court.

1. E. 3. c. 4. Sheriffs, and Bailiffs of Fée, ſhall cauſe their Counties, and Bailywicks to be kept, by ſuch as have lands therein. *Bailiffs of Fee.*

Bailiffs of Fée, are Officers of Fée within their juriſdiction or precinct; And for the execution of proces there, the Sheriff ſhall not write or ſend his Precept, to theſe Bailiffs, as to Bailiff of a Franchiſe, but as to the Bailiff of Gildable; and the Sheriff ſhall return his anſwer, as if the Sheriff himſelf had ſerved the proces, 27. Aſſ. Br. Proces 98. and the Return alſo ſhall be in the name of the Sheriff.

CAP. 117.

Bayliffs of Franchiſes.

Bayliffs of Franchiſes or Liberties, are thoſe that be appointed by Lords within their Liberties, to do ſuch Offices within the Precincts of ſuch Lordſh. or Liberties, as the Bayliffs Errants do at large abroad within the County.

Theſe Bayliffs of Franchiſes which have return of Writs, can not arreſt a man without a Warrant or Precept to them made by the Sheriff, upon or by force of the Kings Writ in the hands of the Sheriff. Kiel. fol. 86.

All Bailiffs of Franchiſes and Liberties, before they intermeddle with the execution of their Office ſhall take two corporal Oaths, the one concerning the ſupremacie, the other for the true exerciſing of their Office ſub pœna 40. l. See hic antea. *Bailiffs of Franchiſes. Their ſeverement.*

A Bailiff of a Franchiſe or Liberty is an Officer by himſelf, and hath not to with the Sheriff, 21. H. 7. fol. 23. a.

And yet it is a principal part of his Office, duely to Execute all Precepts directed to him from the Sheriff; And to make due return thereof to the Sheriff. Cromp. 57.

And if the Bayliff of a Franchiſe, upon the Sheriffs Warrant, ſhall arreſt a man, and ſhall not return the Warrant to the Sheriff, the party arreſted may have his action of *faux impriſonment* againſt the Sheriff. But if the Bayliff ſhall make his return to the Sheriff, that he hath arreſted the party, and hath delivered him to the Sheriff, and then the Sheriff will not return the Capias to the Court, here no action of falſe impriſonment will lye againſt the Bayliff of the Franchiſe, for that he hath executed his Warrant and office well; And the Bayliff

liff of the Franchiſe is to make his Retorn to the Sheriff, and not into the Court. Keil. 87. Vide hic cap. 37.

Poſt bailer. Bailiffs of Liberties, may bail ſuch manner of perſons being in their cuſtody, as ſheriffs may; And they may take the like obligations for the appearance of ſuch perſons by them to be bailed. 23. H. 6. c. 10.

If the bailiff of a Franchiſe ſhall arreſt one by a Warrant upon a Capias to him directed from the ſheriff, yet the obligation (taken for the appearance of the party) muſt be made to the ſheriff, and taken by the bayliff in the ſheriffs name. 23. H. 6. c. 10.

Ne ſerra attorney. No ſteward, bailiff, nor Miniſter of Lords of Franchiſes which have retorn of writs, ſhall be Atturny in any plea, within the ſame Franchiſe or Bailiwick whereof he is or ſhall be miniſter or officer. 4. H. 4. 19.

Stewards and bailiffs of franchiſes, and their deputies and clerks, may kæp and enjoy their laid offices for ſo long time as the ſame is or ſhall be given unto them. 27. H. 8. 24.

Lour fees. Bailiffs of liberties ſhall take ſuch fées, as the ſtatutes have ſet down for the Sheriffs and their officers; which ſée hic poſtea. 23. H. 6. c. 10.

Lour forf. All other ſtatutes made before the 4. Februarii Anñ 27. H. 8. for or concerning ſheriffs, or their underſheriffs, bailiffs or other Miniſters (for making or returning any Juries, ſerving of any proces, taking of fées, for extortions, or for any other thing concerning their offices) And all pains and penalties in every ſuch ſtatute contained ſhall be in force againſt, and extend to, all ſtewards, bailiffs, and other miniſters and officers of liberties and franchiſes, having return of writs and executions thereof; in like maner as they extend to Sheriffs, underſheriffs, &c. As if the ſaid ſtewards, and bailiffs of liberties, &c. had bén particularly named in ſuch ſtat. ſaving that the ſaid ſtewards, bailiffs of franchiſes, their deputies or clerks, may occupy their offices above one year, viz. for ſo long time as they be given to them. 27. H. 8. 24.

Fines and amerciaments for inſufficient returns (of writs, and other proces) made by the ſtewards, or bailiffs of liberties, ſhall be ſet upon the heads of ſuch ſtewards, or bailiffs, and not upon the Sheriff. Ibid.

The King ſhall have all manner of fines, iſſues, amerciaments, and forfeitures, that ſhall be forfeit by any ſtewards, bayliffs, or other miniſter or officer of any libertie, for non execution or miſexecution of any writ, warrant, or proces to them directed; Or for inſufficient returns thereof, Or for any contempt or other miſdemeaner whatſoever concerning their offices, in and for the due execution or adminiſtration of Juſtice: P. Prer. 20. Ibid.

Attender les Judges, &c. All bailiffs and officers of liberties (which in time paſſed have uſed or ought to attend) ſhall attend upon the Juſtices of Aſſiſe, Juſtices of gaol delivery, and Juſtices of Peace, of the ſame ſhire wherein ſuch liberties and franchiſes be; And ſhall make due execution of all proces to them directed for miniſtration of Juſtice within ſuch liberty. 27. H. 8. 24.

All Lords that have Franchiſes, or their bailifes, ſhall attend upon the Juſtices of Aſſiſe and Gaol delivery, upon pain of forfeiture of their Franchiſes. 20. E. 4. fol. 6. Br. Forfeiture 115.

Alſo all ſuch bailiffs (or their deputies) ſhall attend and aſſiſt the ſheriff, together with the ſheriffs bailiffs, at all Courts of Gaole delivery from time to time, for execution of priſoners according to Juſtice. 27. H. 8. c. 24.

Provided that the officers of Cities, Boroughs, and Towns Corporate, having Priviledges not to attend or appear out of their City or Town, ſhall not attend ellewhere, but ſhall enjoy their liberties and priviledges. Ibid.

Note, that ſuch Liberties, Franchiſes, Priviledges, and temporal Juriſdictions, as came to the King by ſuppreſſion of the houſes of Religion, and by their grant, And alſo ſuch as come to the King by Atteyn-

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der of Treaſon, ſhall be revived in the King; And the Officers thereof ſhall be perſonally attendant to the Kings Courts, and ſhall ſerve, execute and return all Proces, Precepts, and Warrants, as they ought to have done before they came to the kings hands. 32. H. 8. cap. 20.

4. E. 3. 9. 5. E. 3. 4. Bailiffs of Liberties ſhall have ſufficient lands in the places where they be miniſters, and in the ſame County, whereof to anſwer the King, and his people, if any will complain againſt them. *Lour ſufficiency.*

Regiſt. 178. If the Lord of a Liberty ſhall chooſe any man to be Bailiff of his Liberty, who hath not ſufficient lands within the ſame County, then a Writ ſhall be ſent to the Sheriff (of the ſame County wherein ſuch Liberty is) commanding him to diſcharge or remove ſuch Bailiff, and to chooſe another Bailiff in his place: Fitz. 164. b.

And an Alias, Pluries, and an Attachment, lyeth againſt the Sheriff, if he ſhall not do according as he was commanded by ſuch a Writ.

12. E. 2. c. 5. Bailiffs of Liberties have full power to return the Kings Writs: And every return of any Writ to be made by any Bailiff of any Franchiſes or Liberty, ſhall be delivered to the Sheriff, by ſuch Bailiff of Liberty, by indentures to be made between the Bailiff of the Franchiſe, by his proper name; and the Sheriff by his proper name: And if any Sheriff ſhall change the return ſo delivered him by Indenture, and be thereof convict (at the ſute of the Lord of the Franchiſe, and at the ſute of the partie indammaged, &c.) he ſhall be puniſhed by the King, for his falſe return, and yield unto the Lord, and to the party double damages, Vide M. 15. e. 3. Abr. daſſ. 132. *Return of Writs, by Ind.*

12. E. 2. c. 5. And the Sheriff ought not to make any other Return, but according to that which the Bayliff of the Liberty ſhall certifie him. Kiel. 89.

Bailiffs of Liberties, that receive the Kings Writs, returnable in his Court, ſhall put their own names to their return; So that the Court may know of whom they take ſuch return; if need be: And if any Bailiff leave out his name in his return, he ſhall be grievouſly amerced to the Kings uſe: ſee hic antea, Return of Writs. *Mitter lour noſmes.*

2. H. 5. c. 8. 15. H. 6. c. 5. Amerciaments for inſufficient returns of Writs, or other proces, made by ſtewards, or bailiffs of Liberties, having return of Writs, and execution of the ſame, ſhall be ſet upon the heads of ſuch ſtewards or bailiffs, and not upon the Sheriff: 27. H. 8. c. 24. *Amerce.*

8. H. 6. c. 5. Bailiffs of Liberties ſhall impannel and return upon enquells, ſufficient perſons, and ſuch as be dwelling within their bailiwicks, &c. in Cales of Atteints and Riots. *Return Enqueſts.*

Where a precept is made to the Sheriff by the Juſtices of Peace, to return a Jurie to inquire of a forcible Entrée, and the Sheriff direct his precept to the Bailiff of a Liberty to return the Jury, for this; For that the force is made within the libertie; Now the Bailiff of the Liberty ought to make a due return and execution of the precept to him directed (ſcz. the Bailiff ought to return upon every Jury twenty ſhillings in iſſues at the firſt day, &c. and that every Juror within his Liberty, who is to enquire of ſuch Forcible entrée, may ſpend forty ſhillings per annum) upon pain of twenty pound for every default.

23. H. 6. c. 10. Bailiffs of Liberties, ſhall return none of the Sheriffs Officers; nor any of their ſervants, upon enquells.

Fitz. Chal. 2. But where the Bailiff of the Liberty is party to the ſute, he ſhall not return the Jurie, or malle the pannel of the Array.

1. E. 3. c. 5. 13. E. 1. c. 39. A man may aver againſt the falſe returns of Bailiffs of Liberties; And ſhall recover as well againſt them, as againſt the Sheriff, of too little iſſues returned, as in other cales: And therefore upon a Writ of *Averments*

Diſtreſſe directed to the Sheriff to diſtrain the Defendant in the ſame writ, or the Jurors of any enqueſt, if the Sheriff thereupon ſhall make his precept to the bailiff of the Libertie, the bailiff ought to return good and ſufficient iſſues upon the Defendant, or upon the Jurors, if they have ſufficient Lands or Tenements within his baylywick; otherwiſe the Plaintiff in the action ſhall have an averrement againſt this return of the Bayliff, ſcz. that the Bayliff might have returned greater iſſues, if the Defendant maketh default, or the Jurors: Cromp. 215.

Where the Sheriff may, and ought for to enter a Liberty, or Franchiſe, &c. Scribe hic *Cap.* 40. *all this Chapter.*

SOmetimes the Sheriff ex Officio, and without any Writ (of Non Omittas propter libertatem) may enter the Franchiſe, and Execute his Office, ꝛc. As if, ꝛc.

Vic' poſt enter Franchiſe. If any mans beaſt, or other goods be diſtrained or taken, and withholden or impounded, if they were taken within any libertie, the bailiff of the Libertie is to make Replevin and to deliver them; But if the bailiff of the Libertie (after complaint to him made, ꝛc. or after the Sheriff hath made the Return of the Kings Writ unto him) will not, or do not deliver them (or cauſe them to be forthwith delivered) then the Sheriff himſelf, for default of ſuch bayliff, ſhall preſently enter into the Libertie, and ſhall deliver them, or cauſe them to be delivered without delay, upon pain of forfeiture of double damages; And this is by force of the ſtatutes made 52. H. 3. c. 21. & 3. E. 1. c. 17. ſee the Regiſter fol. 81. b. & Fitz. N. B. fol. 68. f. & *viel* N. bre. 44. 52. H. 3 c 21. 3. E. 1. c. 17. P. Sheriffs 28.

In default del bailife.

If upon a Replevin, ſicut Alias, or Pluries, the Sheriff ſhall Return, that he hath commanded the bailiff of the franchiſe, ꝛc. who hath made no Return to him, or who will make no deliverance, ꝛc. it ſeemeth that theſe are no good Returns, for that by the ſtatutes of Marlebr. 21. & Weſtm. 1. 3. Ed. 17. 3. the ſheriff (upon ſuch default, or Return made to him by the bailiff) ought preſently to enter into the franchiſe, and to make deliverance of the goods taken, ꝛc. And ſo if a Plea of Withernam be in the County by Plaint before the Sheriff, and the ſheriff commands (or ſends his precept to) the bailiff of the franchiſe to make deliverance, ꝛc. and the bailiff doth nothing, then the ſheriff, or his officer ex Officio may enter into the franchiſe and make deliverance, without any Writ of non Omittas, &c. directed in ſuch caſe. Et hoc vicecomiti ex neceſſitate Conceditur. Fitz. 68. i. Fitz. 68. f.

he is a Judge.

In a Writ of Rediſſeiſin, and in a Writ to enquire of Waſte, the ſheriff is both Judge and Officer, and there, if the Land do lye within a Franchiſe, the ſheriff cannot Return Mandavi ballivo, &c. for he cannot grant over his judicial power, nor make his Deputy in ſuch caſe; But the ſheriff ought there to enter the Franchiſe, and to ſerve the Writ himſelf; And if he ſhall do otherwiſe, it is error; For in theſe caſes of Rediſſeiſin, and Waſte, the ſheriff is Judge of the Record. 11. H. 4. fol. 6. 94. Br. Offic' 34.

Ne poſt fair' Deputie.

Note, that the ſaid Writ of Rediſſeiſin commands the ſheriff, quod in propria perſona ſua accedat ad terram, &c. & per ſacramentum faciat inquiſitionem, &c. And ſo the Writ to enquire of Waſte, is, quod accedat ad locum vaſtatum. 2. Hen. 4. fol. 1. Fitz. 188. c. Br. Retor. 36.

In an Ejectione cuſtodiæ, at the diſtreſſe with Proclamation, the ſheriff returned Mandavi ballivo libertatis, &c. And by the opinions of Thirning and Markham, the ſheriff ought to be Amerced, for the Proclamation 2. H. 4. 1. Br. Elect. Cuſtod. 1.

clamation is to be made by the ſheriff by the ſtate (of 23. E. 1. cap. 35. And then for that the diſtreſſe with Proclamation, is a thing entire, the ſheriff ought to have entred the Franchiſe, and executed the whole writ himſelf: But Rikhill and Tirwit held the contrary, Ideo quære. Yet note that in a Præcipe quod reddat of Land, part in guildable, and part in a Franchiſe, the Sheriff ſhall make his Precept to the Bayliff of the Franchiſe for parcel, and muſt ſerve and execute the reſt himſelf. *Where the thing is intire.* Ibid.

Where the bayliff of the Liberty is party to the ſute himſelf, he ſhall not Return the Jury, or make the pannel, but the Sheriff ought to enter the Liberty, and to pannel the array. Herle 7. E. 3. 56. & 7. aſs. 11. *The Bayliff a party.* Fitz. Chall. 2. Fitz. 155. a.

And yet the bayliff of the Liberty might have made the Return in the name of another bayliff, For he might have made another bayliff for that time, by the opinion of Herle. ibid. & Fitz. Chal. 2.

But the Deff. himſelf ſhall never take benefit of a Liberty; And therefore if the bayliff of a Liberty be Deff. in any action, and Proces of Capias, or fieri fac. cometh to the Sheriff againſt the bayliff of the Liberty, the ſheriff ſhall execute the Proces upon him or his goods within the Liberty; for that the Liberty is always for the benefit of him that is a ſtranger to the action. Co. 5. 92.

And ſo it ſæmeth, where the Lord of the Liberty is party to the ſute. Vide Plo. 46. Fitz. 155. a.

If any Felon, or other offender againſt the Kings peace, &c. ſhall be within any Liberty or Franchiſe, and the Juſtices of Peace, &c. ſhall direct their Warrant or Proces to the ſheriff for the apprehending of ſuch offender, The ſheriff is to enter ſuch Franchiſe, and to execute the Proces or Warrant, and not to write to the bayliff of the Franchiſe, for that here the King is a party, ſæ 38. Aſs. 19. & 41. Aſs. 17. Br. Franch. 18. 31. Co. 5. 2. part. fol. 92. *The King a party.*

Alſo note that in all caſes or actions whereſoever the King is a party, the Proces always muſt be with a Non omittas propter aliquam libertatem, for none is to ſerve the Kings Proces but his Miniſters; And there the Sheriff ought not to write, or ſend his Precept to the bayliff of the Franchiſe or Liberty, but ought himſelf to enter, and to execute, and ſerve the Proces, otherwiſe he ſhall be amerced. And ſæ Fitz. Chall 129. that the King hath no other Miniſter than the Sheriff, And where the King is a party, no Franchiſe ſhall be allowed, &c. Fitz. Prerog. 21. Enqueſt. 12. Plo. 236. 243. 38. Aſſ. 19. 41. Aſſ. 17.

Note that the King gets no Franchiſe againſt himſelf. 22. E. 3. fol. 21.

Note alſo that every writ for the King (or where the King is a party) is always a Non Omittas in Law of it ſelf. 41. Aſs. 17.

But in other caſes where the King is no party, there, if without a Non omittas the Sheriff ſhall enter a Franchiſe which hath Return of writs, to execute any the Kings Proces, though the ſerving of the Proceſſe be good, yet he ſhall be ſubject to the action of the Lord, &c. And therefore if the Sheriff, or his Officer, taketh one in execution for Debt, within a Liberty, although the execution be good; For that the Sheriff is the immediate Officer of the King and to the Kings Courts, to execute all Proceſſe; Yet the Lord of the Liberty or Franchiſe, may have his Action of the Caſe againſt the Sheriff, for entring into his Liberty: Fitz. N. Br. 95. b. & 20. H. 7. fol. 7. Finch. fol. 52.

And in all Caſes, as well upon the default of the bayliff of the Fran-

chiſe, as otherwiſe, it ſeemeth that as on the one part the Sheriff may (in ſome Caſes) excuſe himſelf, by Returning that he hath commanded the bayliff of the Franchiſe, &c. So on the other ſide, although the Sheriff may more ſafely enter the Liberty, cum Warrantum habuerit (ſc. upon a Non Omittas propter libertatem directed to him) yet if without a Non Omittas, the Sheriff, or his Officers by his command, ſhall enter the Franchiſe, and make Execution of the Kings writ, it is good in Law, for that the Sheriff is the immediate officer to the King; and his Courts, in ſuch caſes: And the onely danger is, that the Lord of the Franchiſe may have his action againſt the Sheriff, or officer, for entring his Franchiſe, &c.

Enfreint lour liberty.

But if the Sheriff or his officer ſhall take one within a Franchiſe, upon a Capias, or other original proceſs, the party ſo taken ſhall have no remedy; For it is all one to the party ſo taken, whether he be taken by the Sheriff, or by the Lord, or Bailiff of the Liberty; And yet here the Lord of the Franchiſe ſhall have his Action againſt the Sheriff, or his officer, as before. 43. E. 3. 30. & 4. 11. H. 4. 9. Fitz. 95. b.

If the bayliff of the Franchiſe ſhall take one in execution within the Guildable, it is error. 11. H. 4. fol. 9. Br. Offi. 35.

A Capias goeth out to the Sheriff of Middleſex, and they Arreſt the party in London, a writ of falſe impriſonment lieth againſt them for this Arreſt, And yet the Sheriffs of Middleſex are Sheriffs of London. Br. faux. imp. 26.

Seiſe biens de felons.

Bayliffs of Franchiſe ought not to take, or ſeiſe the goods of any perſon arreſted, or impriſoned for Felony, before the ſame perſon be convicted or attainted of the Felony according to Law; Or that the ſame goods be otherwiſe lawfully forfeited; upon pain to forfeit the double of the goods ſo ſeiſed to the party grieved, &c. 1. R. 3 c. 3. Stamf. 193.

CAP. 118.

Bayliffs of Liberties and Gaolers.

Cauſe priſoner deſte approver.

Sheriffs, bayliffs of Liberties, and Gaolers, which have the keeping of Priſoners to Gaols, if by dureſſe of impriſonment they ſhall compel Priſoners to appeal or accuſe others, they ſhall be puniſhed by the Juſtices of Gaol delivery: ſee the ſtatutes 13. E. 1. cap. 12. & 1. E. 3. cap. 7. 1. E. 3. c. 7.

But after by the ſtatute made 14. E. 3. c. 10. It was made Felony for a Gaoler or Keeper of the Priſon to cauſe a Priſoner to become an approver or appealor. 14. E. 3.

Receiver felons.

Such bayliffs of Liberties ſhall receive Felons arreſted, or taken within their Franchiſe, and ſafely keep them in Priſon without taking any thing: Cromp. 215. 4. E. 3. c. 10.

Et perſons ſuſpect.

Such bayliffs ſhall receive night walkers, or other ſuſpected perſons, which ſhall be arreſted or taken within their Franchiſe, And ſhall keep them in Priſon till the coming of the Juſtices of the Gaol delivery, &c. 5. E. c. 14.

Certifier lour priſoners.

Such bayliffs ſhall certifie the names of ſuch Priſoners as they have for Felony, at the next Gaol delivery in that County or Franchiſe. 3. H. 7. c. 3.

Goalers.

4. E. 3. c. 10. 28. E. 1. ſtat. de Appelat. 11. E. 4. fo. 4.

Sheriffs and Goalers ſhall receive and ſafely keep in their priſons, all Theeves, Felons, and perſons appealed or indicted, which ſhall be taken and attached, and delivered or brought to them by the Conſtables and Townſhips; without taking any thing for the receit of them; And the Juſtices of Gaol delivery have authority to hear their complaints that will complain of the Sheriff and Goaler in ſuch caſe, and to puniſh them if they be found guilty. *Gaolers. Receivor Felons.*

But a Goaler is not bound to deliver his priſoner who is diſcharged by the Court, untill he be payd his due Fees; For the priſoner is diſcharged paying his Fees. 8. E. 4. 18.

Goaler ſhall take no Fees for any Servant, Labourer, or Artificer committed to Priſon, for not ſerving, &c. neither at their Entrée, nor when they go out of Priſon, upon pain of ten pound, 34. E. 3. c. 9.

A Priſoner acquited of Felony, the Goaler may take 12. d. which is called a Barr Fee: And if he take more it is Extortion.

Sheriffs ſhall have the keeping, rule, and charge of every of the common Gaoles in every of the Counties where they be Sheriff, and the Priſoners therein: And they muſt put in ſuch Keepers, for whom they will anſwer: Statute 14. E. 3. c. 20. & 19. H. 7. cap. 10. & 23. H. 8. cap. 2. (See my countrey Juſtice pag. 148.) Except all Gaolers whereof any perſon Spiritual or Temporal, or bodie Corporate have the keeping of eſtate of inheritance or ſucceſſion. *Vic' charge one Goale.* Co. 4. 34.

And all Murderers, and Felons, ſhall be impriſoned in the Common Gaols, and not elſe where. *Felons la tantum.* 23. H. 8. c. 2.

Every Sheriff, Bailiff of Franchiſe, and every other perſon having authority of keeping of Gaols, or of Priſoners for Felony, ſhall certifie the names of every ſuch priſoner in their keeping, and of every Priſoner to them committed for any ſuch cauſe, at the next general Gaol delivery, in every County or Franchiſe where any ſuch Gaol is, or ſhall be, there to be Kalendred before the Juſtices of the delivery of the ſame Gaol, whereby they may as well for the King, as for the partie, proceed to make delivery of ſuch Priſoners, according to the Laws, upon pain to forfeit to the King for every default there recorded five pound. 3. H. 7. c. 3. *Certifier. four priſoners.* 3. H. 7. c. 3. P. Priſon. 3.

No Writ of Habeas Corpus ſhall be granted to remove any Priſoner out of any Gaol, except it be ſigned with a Juſtices hand of the ſame Court, out of which the ſame Writ ſhall be awarded or made. *Habeas corpus.* 1. & 2. Ph. & M. c. 13.

If a Goaler having a Lay man priſoner (or in his cuſtody) ſhall ſuffer him to be inſtructed or to learn to read, the Goaler ſhall be puniſhed for this as a contempt or offence in diſturbance of the Common Law, and in deceit of the King. Dyer. 205. b. Finch.

If a man be committed to the Gaol for debt, or arrerages of account, and the Goaler maliciouſly puts upon him ſo many Irons, or puts him in the ſtocks, or withholds his victuals from him, by reaſon whereof he becoms decrepit, lamed or otherwiſe diſeaſed, &c. he may have his action of the caſe againſt the Goaler: See my Country Juſtice tit. Impriſonment. *Miſuſe priſoners.* Fitz. 93. h.

And yet by the ſtatute of Weſtm 2. cap. 11. Accomptants, and ſuch as are in execution, the Sheriff or Gaoler may put Irons or Fetters upon them, (ſcz. in reaſonable manner.) See hic antea: Execution upon a Capias ad ſatisfac'.

Alſo notorious Felons, and ſuch as be openly of evil name, or be Rebellious

bellious, ſhall have ſtrong and hard impriſonment. Stat. Weſtm 1. cap. 12.

But if any Sheriff, Gaoler, or Keeper of any Priſon, ſhall procure, or by dureſs ſhall compel, any of their Priſoners, to become Approvers, or to appeal guiltleſs people, &c. it is Felony. 14. E. 3. cap. 10.

Eſcape. If the Gaoler ſhall ſuffer a Felon to eſcape, the high Sheriff, or Gaoler are chargeable thereſore. See hic cap. 126.

If the Gaoler ſhall ſuffer a priſoner to eſcape, which priſoner was found in arrerages before Auditors, and by them committed to his Gaol, now muſt the Sheriff, or Gaoler pay to the partie the ſum of money which was behind upon the account. Fitz. 95. c. & 130. b. Weſtm 2. cap. 11.

And if the priſoner were in upon an Execution, (for debt, or damages) and ſhall eſcape, the Sheriff, or Gaoler ſhall be chargeable for the debt, &c. Fitz. 121. a. p.

He which hath the keeping of the Gaol, by right or wrong, ſhall be charged for the eſcape of Priſoners. And if he which hath the Cuſtody of the Gaol in Fee, ſubſtituteth another under him, at will, or for life, he which hath the actual poſſeſſion of the Office ſhall be charged (by action) for the Eſcape; but if they be not ſufficient, Reſpondeat Superior, &c. Co. 9. 98.

If the Conuzor of a ſtat. mercht, be taken in Execution, and ſent to priſon, here if the Gaoler will not receive him, whereby he Eſcapeth, the Gaoler being able ſhall anſwer the Debt, otherwiſe the Sheriff, &c. which committed the keeping of the priſon to him, ſhall anſwer the Debt. Stat. de mercatoribus.

And ſo in all other caſes, where a man is condemned in any of the Kings Courts for Debt, and thereupon ſent to priſon, if the Gaoler ſhall refuſe to take ſuch a priſoner (being delivered or brought to him) if the priſoner Eſcapeth, the Gaoler, or Sheriff, &c. ſhall anſwer the Debt. And if the priſoner do not Eſcape, yet the Gaoler ſhall be fined (by the Juſtices of either Bench, or Juſtices of Aſſiſe, &c.) for ſuch refuſal only. 4. E. 3. cap. 10.

If a Gaoler ſhall refuſe to take a Felon by the delivery of a Conſtable, he ſhall be fined. 4. E. 3. cap. 10.

But if between the Conſtable and the Gaoler the Felon ſhall eſcape, quære if this be not Felony in them both.

An Offendor committed to priſon by the Preſident of the College, &c. of the Phyſicians in London, if the Gaoler ſhall refuſe to receive ſuch an Offendor, or ſhall ſuffer him to Eſcape, he ſhall forfeit ſo much as was aſſeſſed upon the ſaid Offendor. Stat. 1. Ma. cap. 9.

Note, if one in priſon for Felony Eſcapeth, if freſh ſute be made after him, the Gaoler, &c. may take him again though it be ſix years after. See Fitz. Eſcape 2.

So of a Priſoner taken in Execution, who makes an Eſcape of his own wrong, &c. Co. 3. fol. 44. & 52.

Priſt. oblig. If a Gaoler ſhall take any obligation of his Priſoner, with condition (endorſed, &c.) to be true Priſoner, it is void. Co. 1a. 100. b.

So of a condition to pay for his meat and drink, ſuch obligations are void. Co. 1c. 100. b. For the Sheriff, Gaoler, or other Officer, are bound to find meat or drink for their Priſoners. Plo. 68. a. Tamen Co. 9. 87. b. that the Gaoler is in manner compellable to find victail for his Priſoners.

And it ſeemeth that Gaolers may not take any bond or obligation, of any their Priſoners, or of any other, for the inlargement of their Priſoners, in any ſort whatſoever.

Con-

Concerning the Goalers Fees, &c. See hic poſtea titulo Fees. *Fees.*

Where a man is in priſon, &c. although the party at whoſe ſute he is committed do releaſe to him, yet he ſhall be kept for his fine due to the King; And ſo if the King ſhall releaſe to him, yet he ſhall be kept in Priſon until he hath ſatisfied the party: And although both the King ſhall releaſe his fine, and the party his duty, &c. yet the Goaler may keep the Priſoner until he hath paid his Fees, and for his reaſonable dyet.

Plo 20. 6. Br. faux. imp. 32. Note, that in ſome caſe a Priſoner ſent out of one Shire or County, ought to be received by the Sheriff or Gaoler of another County: And therefore whereas the ſtat. of Weſt. 2. c. 11. provideth that in caſe of accounts before Auditors, and arrerages found, Arreſtent' corpora eorum & per teſtimonium Auditorum ejuſdem compoti, mittantur & liberentur proximæ Goalæ dñi Regis in partibus illis, &c. Thereupon it was holden in 27. Hen. 6. that the Auditors ought to commit the accomptant to the next Gaol, although the next Gaol be in another County, for that they might not vary from the place limitted by the ſtat. And then if the Sheriff, or Gaoler ſhall refuſe to take ſuch a priſoner being delivered to them, and ſo the Priſoner ſhall eſcape, &c. the Sheriff or Gaoler are chargeable for the debt, by the ſame ſtatute of Weſtminſter 2.

Et en tiel caſe dicitur que le Seigneur poet aver bre hors del Chancery directi al vic. ou gaoler, &c. commands luy de reſceiver le Accomptant, Et ſil ne voe il ſerra attache, & apres Diſtr. ſil ne vient; Et ſil vient & ſoit atteynt de ceo, il rendra damages al Seigneur pur tout ceo que il ad eſtre indamage: Ou quant les Auditors ameſuent le Accomptant al Gaoler, Et il ne veut reſceiver luy, les Auditors poet leſſer le Accomptant de aler alarge, Et nient ob. le Seigneur avera bre de Dett envers le Gaoler, accordant al parolx del ceo ſtat. Et ſi le Goaler n'eſt ſuffic: deng; le Seigneur poet aver ſon action de Dett envers le vic. &c. qui cuſtodiam Goalæ ſibi commiſit.

If a Felon be arreſted by the Conſtable and carried to the Gaol, and the Gaoler will not receive him, whereby the Felon eſcapeth, the Gaoler ſhall anſwer it. See hic cap. 126.

CAP. 119.

The Fees, Allowances, and Avails due to the Sheriffs and their Officers.

Sheriffs and their miniſters ought to take no reward, or other thing, for doing of their Office, but onely of the King, or that which is appointed for them to take by the ſtatutes (and Laws of this land) and if they do otherwiſe it is extortion in them: And if any Sheriff, or any *Extortion.* of his Officers, &c. ſhall do any extortion, and be thereof attainted (either at the ſute of the King, or of the party) he ſhall yield twice as much as he took, to the party grieved, and beſides he ſhall be puniſhed for the ſame at the Kings will: or he may be indicted thereof, before the Juſtices of Gaol delivery, or Juſtices of Peace, and by them puniſhed, ſcz. they may be fined to the King: ſee the ſtatutes 3. E. 1. cap. 26. 20. E. 3. cap. 6. & 1. H. 4. cap. 11. Vide Co. L. 368.

Holt

Now extortion is thus defined or described.

Quid. Extortio est crimen, quando quis Colore Officii extorquet quod non est debitum, vel quod supra debitum, vel ante tempus quod est debitum. Co. 1. L. 368. Co. 10. 102.

Another describes it thus: Extortion is where the sheriff, undersheriff, bailiff, or other officer, by colour of his office, shall take any excessive reward or Fee; or shall take more than the Law doth allow him (for the execution of his office;) or shall take any reward, or fee, for any matter, cause, or thing, where the Law doth allow no fee at all: P.R. 82.

Gather plus que est due. If the Sheriff or any of his officers, (or any other officer, by colour of his office) shall gather, levy, or receive of any person, any amercements, rents, or other duties, which are not due, or more than is due, this is extortion: and so sir James Altham delivered it in his charge at Cambridge Assises: ann. Domni 1615.

So if by colour of their office they take from any man any money, or valuable thing that is not due. Co. L. 368. So if they shall take any thing for expedition, it is Extortion.

Money le Roy. If any man do levy, and receive money due to the King, or for the use, behoof, or service of the King, and do not imploy the same accordingly; or else doth not pay the same money to the King, or his lawfull Receiver, he may be indicted of Extortion: see 27. Ass. P. 15. & 17. Br. Fees 10. & 11. See hic cap. 126.

If the sheriff be to keep his Turn, and shall take of the Suters, or Tenants any money, or other reward to spare them from appearing there, this is Extortion, although his Predecessors have used to take the like. 42. E. 35.

If any bayliff, or other, the sheriffs officer shall take any thing of any person, to spare them from appearing at the Assises, Sessions of the peace, or the like, it is Extortion.

If the sheriff shall Let to ferm his County, Hundreds, or any of his Baylywicks, or any of his Courts, or any part, or profit thereof, it seemeth to be Extortion, if he taketh any Fee, or Rent for the same.

Sparing a Juror. If any sheriff, undersheriff, bailiff of liberty, or any of their officers, shall receive, have, or take by himself or any other, any sum of money, reward, or other profit, directly, or indirectly, or do take any promise, make any agreement, or assent to have any sum of money, reward, or other profit, directly or indirectly of any person, for the sparing, not warning, or not returning, of any person to be sworn as a Juror, for the trial of any issue joyned in any of the Courts of the Kings Bench, Common Pleas, or Exchequer, or before any Justices of Assise, it is Extortion, and every Sheriff and other Officer so offending, shall forfeit for every such offence v. l. to the King and Informer, &c. 27. El. c. 6.

Omitt de arrester, &c. If the Sheriff, or any of his Officers, &c. shall take any money, or other reward, for the omitting of any arrest, or attachment to be made, it is Extortion, and the Sheriff or other Officer so offending, shall forfeit for every such offence xl. l. to the King and Informer, &c. 23. H. 6. c. 10.

Pur monstre favor. So it is, if the Sheriff or Gaoler, &c. shall take any money or other reward, for shewing ease or favour to any Prisoner or Person arrested: See Br. Fees 6. Ibid. 21. H. 7. f. 17. a.

So if the Sheriff or Gaoler shall detain any Person in Prison (after they be discharged by the Court) for meat, drink, or other thing, except for their due fees onely, it is Extortion, 8. E. 4. fol. 18. Br. fees 15.

Barre fee. And yet upon an action upon the statute of 23. H. 6. c. 10. for Extortion against an Undersheriff, for taking of twenty pence above his fee, of a Prisoner in his Ward, &c. and upon evidence it appeared that the 21. H. 7. 16. 17. Plo. 465.

the Defendant and all Undersheriffs of the same County, time out of mind, &c. had used to take of every Prisoner taken for suspition of Felony, and in their Ward, &c. twenty pence, when they were acquitted; and this fee they called bar money, or a bar fee: And by the opinion of the Justices this case was out of the statute, for the intent of the statute is, when sheriffs, &c. shall take such sums of money of their Prisoners, to give ease and liberty to their Prisoners, (who are in their Ward) but here when the Prisoner was acquitted, he was no Prisoner, &c. And this fee was at the first assigned by the Court for a bar fee, by their discretion, in consideration of the great charge which the sheriff is at in keeping, carrying, and recarrying his Prisoners, and so keeping many servants, to convey and attend them, for danger of escape; And so it seemeth the sheriff shall have of every Prisoner which is acquitted of Felony, xx. s. called a bar fee.

Also where a Gaoler shall convey or carry a Prisoner into the Kings Bench, about a Writ of Error, to reverse an Outlary, he shall have for his labour by the discretion of the Court, and it is out of the statute.

21. H. 7. 17. *Si vicont ou Gaoler prist del prisoner son tage, ou autre garment, ou argent extraburſam, mangre ſon teſtē, cenx ſont extra caſum ſtatuti, nec ſont extortion, mez un treſpaſſe; pur recovery de que le priſoner poit aver action, & recover le value in dammages.*

If a man be committed to the Gaol for two several Felonies, and be after discharged, he shall pay but one fee, for the Gaolers attendance was upon one person: and if the Gaoler shall take any more than one fee, it seemeth to be extortion: see 26. Ass. P. 47. B. Fees. 8.

The Sheriff or Gaoler shall take no fee of the Constable or Town, which shall bring or send a Prisoner to the Gaol for Felony. 4. E. 3. Cap. 10.

A servant committed to the Gaol for departing from his Master, or for refusing to serve according to the statute of labourers made 5. Elizab. the Sheriff or Gaoler is to take no fee of him upon his delivery. 5. Eliz. Cap. 4.

34. H. 6. f. 42. If a man that is attainted of trespasse do come into the Court, and prayeth to make his fine to the King, and offereth pledges for his fine, if the Gaoler (or other Keeper of the prison) do take any fees of him it is Extortion, for that he came in gratis, and out of Ward, and yielded himself to the Court: but if there be proces awarded against him for his said fine, and he taken thereby, then he must pay his fees to the Gaoler, &c. and there it is no Extortion, for that he came in by compulsion, and not willingly, P. R. 9.

24. E. 3. f. 4. Br. fees 18. The sheriff prescribed to have xl. s. p an of I. S. and his Ancestors for holding his Torn at D. for the sale of the Defendant and his Tenants, for which sum he distrayned, and by the Court it was holden that the sheriff could not prescribe, for that he is an Officer removable yearly, and therefore the taking of that sum was Extortion.

Sheriffs and their Officers shall receive all Writs without taking any fee, 2. E. 3. c. 5.

Sheriffs and Gaolers shall receive Felons without taking any thing, &c 4. E. 3. c. 10.

And if Sheriffs, their Officers, or Gaolers shall otherwise do, it seemeth to be Extortion.

23. H. 6. ca. 9. Plo. 465. No Sheriff, undersheriff, Bailiff or Franchise, nor any other Bailiff, by occasion, or under colour of his Office, shall take any other thing, by themselves, or by any other person, to their use, or profit, of any person by them arrested, or attached, nor of any other for them, for the omitting of any arrest, or attachment, to be made by their bodies, or of any per-

Loure Fees ſur Arreſt. ſon by any of them by force or colour of their Office, arreſted or attached, for fine, fee, mainprize, letting to bail, or for ſhewing any eaſe or favour to any ſuch perſon ſo arreſted, for their reward or profit, but ſuch as he-under follow.

The Fees allowed them by ſtatute are theſe:

Upon an Arreſt, or Attachment,
- For the Sheriff. xx. d.
- For the Bailiff who maketh the Arreſt or Attachment. iiij. d.
- For the Gaoler, if the Priſoner be committed to his Ward. iiij. d.
- For any Obligation for appearance, if the Priſoner be bailed. iiij. d.

For any Warrant making. iiij. d.

And yet the uſe at this day is, that for any Warrant made upon any Writ, if the Warrant be directed to the ordinary bailiff, or bailiff of the Hundred, then for every name the Sheriff, &c. taketh iiij. d. But if the Warrant be made to a ſpecial Bailiff, then they uſe to take for every name ij. s. whereas there is no fee due to the Sheriff untill the arreſt be made.

Alſo for the Copy of the Warrant, they uſe to take iiij. d.

Quære, how theſe two laſt be warrantable.

If the bayliff of a Franchiſe ſhall arreſt one by a Capias to him directed from the Sheriff, the Bailiff of the Franchiſe ſhall have but iiij. d. and the Sheriff xx. d. and the Gaoler iiij. d. 23. H. 6. 10. Cromp. 58.

They are to take nothing for the making of any Pannel, ſub pœna 40. pound, and to yield treble damages party grieved. 23. H. 6. cap. 10.

But for the Copy of a Pannel they are to take iiij. d.

Retorne de panel. And yet for the Return of the Pannel they uſe to take two ſhillings, but it ſeemeth to be extortion by the opinions of Maſter Lamb. fol. 415. and of Maſter Crompton fol 205. b. and the words of the ſtatute of 23. H. 6. ſhews as much, the words whereof be thus: The Sheriff, Underſheriff, Sheriffs Clerk, Steward, or Bailiff of Franchiſe, ſervant to the Bailiff, or Coroner, ſhall not take any thing by colour of their Office, by him, nor by any other perſon to his uſe, of any perſon, for the making of any Return, or Pannel. And yet ſee the Sheriffs Oath. 27. Eliz. cap. 12. that ſeemeth to allow two ſhillings for the impannelling or returning of a Jury, Ideo quære. Ibidem.

Other Fees belonging alſo to Sheriffs, or at leaſt claimed and taken by them, as appeareth in Mr. Powel.

FIrſt for the Executing of theſe Writs following, the Sheriff (it ſeemeth) may take, as he and the parties can agree.

Sc. For

Sc. For the Executing, &c.
Of a writ to Enquire of Damages.
Of a writ to Enquire of Waſt.
Enquiry upon an Elegit.
And ſo it ſeemeth in all Caſes where the Sheriff is to make any Inquiſition.
Alſo to Execute a Statute.
Or an Habere facias Seiſinam.
Or an Habere facias Viſum.
A writ of Right.
A writ de Partitione facienda.
For removing the Surcharge of Common, &c.
The writ of Forcible Entræ; Or holding with Force; where the party is to be Reſtored.
For Execution of a Judgement, ſuper breve de Dote.

For theſe the Sheriff may take, as he and the parties can agree.

The fees for Returns ſc.

Of every Cepi Corpus.	iiij. d.
Of a Nihil.	iiij. d.
Of a Non eſt inventus.	iiij. d.
Of a Proclamation.	xij. d.
Of a Venire facias.	xij. d.
Of an Habeas Corpus.	ij. s. iiij d.
Of a Diſtringas.	ij. s. iiij. d.
Of a Recordare.	ij. s.
Of an Accedas ad Curiam.	ij. s.
Of a Diſtring. nuper vic.	ij. s.
Of Mandavi Ballivo Libertatis.	iiij. d.
Of an Exigent, ſc. for every name Returned utlawed	iiij. d.
Of Non eſt inventus, upon an Attachment out of the Chancery.	ij. s.

And yet the words of the ſtat of 23. H. 6. c. 10. are thus, *Et que le viſcount, Southvic. Clerk del viſcount, ſeneſchal, ou bailiff del Franchiſe, ſervant ou bailiffe, ne Coroner, preigne per colour de ſon Office, &c. d'aſcun perſon pur le faiſour de aſcun Retorne, ou Pannel, aſcun choſe; Et par le Coppy du Pannell frq; iiij d.* Yet it ſeemeth that uſe and cuſtom hath ſithence allowed them divers Fees. See the ſtat. of 34. H. 8. cap. 26. hic poſtea.

But Co. L. 368. b. ſaith, That they cannot take any thing, but where, and ſo far as the ſtatutes have allowed to them.

Alſo for a Replevin by pleynt in the County Court they uſe to take	ii. s. iiij. d.
For the ſerving of the ſame Replevin.	ii. s. iiij. d.
For the allowance of a Superſedeas iiij. d. and if it be after the return of the Exigent.	xij. d.

If any Sheriff, or any their Officers, ſhall take any Fees, &c. contrary to the ſaid ſtatute of 23. H. 6. cap. 10. they ſhall loſe to the party grieved his treble damages, and beſides ſhall forfeit forty pound to the King, and Informer, or other party that will ſue for the ſame. *Le forfeiture.*

29. El. c. 4. No Sheriff, undersheriff, Bailiff of Franchiſe or liberty, nor any of their Officers, Miniſters, Servant, Bailiffs, or Deputies, by reaſon or colour of their Office, ſhall have, receive, or take of any perſon *Sur Exeeſtion.*

whatſoever, directly or indirectly, for the ſerving and executing of any Extent or Execution, upon the body, lands, goods, or chattels of any perſon whatſoever, more, or other conſiderations or recompence than is hereunder limited and appointed, ſcz. 12. d. of every 20. s. where the ſum exceedeth not 100. l. and 6. d. of and for every 20. s. being over and above the ſaid ſum of 100. l. (ſcz. for every 20. s.) that he or they ſhall ſo levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any ſuch Extent or Execution whatſoever, upon pain that every Sheriff, and other Officer, &c. which at any time ſhall directly or indirectly to the contrary, ſhall loſe to the party grieved his treble damages, and ſhall forfeit beſides 40. l. to the King and Informer, &c. 29. Eliz. cap. 4.

Le forfeiture.

Corporations.

But this former ſtat. of 29. El. extends not to any fees to be taken for any execution done within any City or Town corporat.

Liberties.

Note, that Bailiffs, Stewards, and other Miniſters within Liberties, ſhall have like Fees, and like puniſhments for extortion, as Sheriffs and their Officers have out of Liberties. 27. H. 8. c. 7.

But if the Sheriff ſhall arreſt any man upon a Capias ad Satisfaciendum within a Franchiſe (as he may,) quære in ſuch caſe whether the Sheriff, or the Bayliff of the Franchiſe ſhall have the Fee, For the former ſtat. of 29. Eliz. cap. 4. ſpeaketh as well of Bayliffs of Franchiſes, as of the Sheriff; And it were a wrong to the Lord and Bayliff of the Liberty, if the Sheriff ſhould have the Fee in ſuch caſe.

The Sheriff or his Officer arreſteth one, who at the ſame time hath (in his purſe, &c.) a Superſedeas out of the Chancery, which he delivereth to the Officer after the arreſt, yet the Officer ſhall have his Fee. 21. H. 6. fol. 20. Fitz. Retor. de vic. 16.

Proclamation.

For making proclamation at the Church doze upon an Exigent, &c. the Sheriff is to have 12. d. 32. Eliz. 3.

Their fermes

Alſo it ſeemeth, that there are due or belonging to the Office of a Sheriff (or that Sheriffs have in ferm) certain other Fees, annuities, rents, ferms, iſſues, fines, amercements, eſcheats, eſtraies, and other caſual revenues and profits. See the Book 20. H. 7. f. 12. Toſts caſe verſ. Cromer, and the uſual Indentures made between the Sheriff and his Undersheriff.

Profits in Torne le vic'.

By the ſtat. made 1. E. 4. c. 2. all preſentments and indictments taken by the Sheriffs in their Tozns, ſhall be delivered to the Juſtices of Peace to proceed upon, who after ſhall eſtreat all fines and amercements ſet upon ſuch offendors (as were indicted or preſented in the Torne) and ſhall deliver ſuch eſtreats by indenture (to the preſent Sheriff, &c.) to the uſe and profit of him which was Sheriff at the time of the taking of ſuch preſentments or indictments. And the ſaid (old) Sheriffs ſhall have to their own proper uſe the benefit of all ſuch fines and amercements ſo eſtreated. 6. H. 7. f. 1. Br. Lect 21.

Yea the Sheriffs ſhall have all the amercements, fines, and other profits of their Torne, for that they have no other thing to levie ſo great a ſum as they (and every of them) is charged withall upon their account, but the profits of this Court, by Fairfax, Fineux, and Tremaile. 6. H. 7. fol. 2. & 3.

Quære the certainty what the other profits of the Torne are, which the Sheriffs are to have.

And ſee the ſtat. of 2. & 3. Ed. 6. what allowances and rewards Sheriffs ſhall have upon their accompts in the Exchequer, and P. Sheriffs 38.

But note, concerning Felonies preſented in the Torne, the Sheriff is to have no have no profit thereof, but only the King. 6. H. 7. 3.

Quæn

Co. 4. 33. Quæn Elizabeth during the vacancie of a Sheriffwick, granted (by her letters patents under the great seal) to one, the Office of the Clerk of the County Court, with all the Fees, &c. during his life, and after a Sheriff was cholen and made of the same County, and upon question made thereof, the Quæns grant was adjudged to be void, for that the County Court, and the entring of all the proceedings therein, are incident to the Sheriffs Office, and so of the Sheriffs Torne; and therefore the Sheriff is to appoint Clerks under him, both in his County Court, and Torne, such as he will answer for. *In the County Courts.*

And Law and reason both requires that the Sheriff, who is a publick Officer and Minister of Justice, and who hath an Office of so great Eminency, confidence, peril and charge, ought to have all rights appertaining to his Office, And also ought to be favoured in Law before any private person, &c. Co. 4. 33.

The Sheriff is also to have all Amerciaments assessed or set upon offendors in the County Court. Whereof See hic cap. 115.

The Sheriff is also to have for the Entring of Pleyats, Proces, Plæs, and Judgements in the County Court, the Fees due and accustomed.

By the statute made an 34. H. 8. the Sheriffs in Wales shall keep their County Courts monethly, and their Hundred Courts for plæs under xl. s. as is used in England, and shall take for the entring of plaints, proces. pleas, and judgements in their said Shire Courts, and Hundreds, such small fees as are used to be taken in Shires and Hundreds in England. P. Wales 41. *Wales.*

P. 45. 34. H. 8. All bills sued before the Justices of Assile in Wales in personal actions, whereof the debt, duty, or dammage is under xl. s. the Sheriff shall have for the return of every bill ij. d. and for every Venire facias, Tales, Habeas corpora, and Distringas ij. d. and for writs of execution upon the judgment in any such bill xij. d. And in bils sued before the said Justices in actions personal above the sum of xl. s. the Sheriff shall have for the return of every such bill. iiij. d. and for the return of every Venire facias, Habeas corpor. Distringas, and Tales iiij. and for every Writ of Execution ij. s. And in all personall actions sued by original writs returnable before the said Justices, the Sheriff shall have for every Iterum summ, Distring', and Alias Distring' iiij. d. And for every Venire fac', Habeas corpora, Distring' and Tales vj. d. and for every writ of Execution to be executed upon the judgement in any such actions ij. For the serving of every writ of Elegit vj. s. viij. d. And in all real actions or mixt, pursued before the said Justices by original writ, for return of every original writ ij. s. and for return of every other writ and judicial proces depending upon the same before judgement ij. s. and for every writ of execution after judgement upon every original in actions real or mixt ij. s. and for serving of every writ of Habere facias seisinam 6. s. 8. d. And for Attachments upon Capias, or other proces sued before the said Justices by original or judicial writ if he return Cepi corpus 2. s. and for a Reddidit se upon an Exigent of Felony in appeal of murder, or maime, or upon any indictment of Felony or Murder, 2. s. And upon a Reddidit se upon an Exigent of debt, trespas, detinue, and all other actions personals 12. d. And for the making of a Repleg' 12. d. and Withernam upon the same 12. d. For the return of every writ of appeal of murder, felonie, or maime 12. d. And upon all other processe grown upon the same, as Venire facias, Tales, Habeas corpora, and Distring' 12. And in every action taken before the Sheriffs by Justicies for the summons thereof 4. d. and for every other proces

thers-

thereupon 4. d. And for every prisoner delivered by acquital, or by proclamation for any manner of Felony, 12. d. 34. H. 8.

And the said Sheriffs shall have for the return of a Writ of false Judgement out of a base Court, before the said Justices 2. s. And the said Sheriff shall take no manner of fee for the return of any of the said Writs of execution before expressed, unlesse he return the same executed. 34. H. 8. 34. H. 8. P. Wales 48.

Wales. Every Sheriff within the 12. Shires of Wales, hath for his Fee yearly five pound. 34. H. 8. cap. 26.

Cambridge. Where the Sheriff of Cambridgshire is to have to his own use for his time, ten pound per ann out of the Mannor of Haddingley, in the said County. See Stat. 34. H. 8. cap. 24. hic tit. Knights of the Parliament.

Also the Sheriff is to have divers profits of the County, under the name of Tailcountiels. Whereof see hic antea cap. 3. & 9.

Every Sheriff (within one month after the arrival) may seise all the goods of Egyptians, &c. that shall come into this Realm, and may keep the one moitie thereof to his own use, making accompt to the King in the Exchequer for the other moitie. 22. H. 8. c. 10.

But at this day, Sheriffs are abridged of many of their ancient duties: for Of ancient time, For theft only the Sheriff had to his own use, all the Felons goods. hic fol. 29. b.

CAP. 120.

Their Accompt.

By the Stat. de Scaccario made 51. H. 3. Sheriffs shall come to the Proffer (and make their accompts and payments) in the Exchequer twice in the year, sc. the morrow after St. Michael, and the morrow after the Utas (or Octaves) of Easter.

Quære If this coming to the proffer, and making of Accompt in the Exchequer, most not be, or was not heretofore by the High Sheriff him personally, The Sheriff may make his Accompt (or proffers) by an Atturne, to which purpose there is a Writ in the Register fol. 139. de Atturnat. Vicecomitis pro profro faciendo, admittendo. By which Writ also it appeareth, that these proffers (or this their Accompt) should be, ad Crastinum Sancti Michis, & ad octaves Paschæ, &c.

Also if there be cause the Sheriff may have a Writ (to the Treasurer and Barons) for the respitting of his Accompt, until some other day or time. Registr. 139.

And by the stat. of 5. R. 2. cap. 11. The Accompts in the Exchequer shall be more speedily heard, made, and ingrossed, than they were wont before times; Saving that the parcels of the same Accompts be made as fully as they were wont to be in times past.

No Sheriff shall be charged with any issues to be levied, nor shall levy any before they pass out of the Exchequer, by the Estreats of the Justices there to be levyed (And by those Estreats every head shall be charged for issues forfeited like as for Amercements) And if any Sheriff will answer for the issues of any Recognisor, Pledge, or Painpernour by him undertaken and returned (into the Court) which at the time of the return is not able to pay such issues or Amercements, the Sheriff shall be charged, and shall answer therefore in the Exchequer. And the Sheriff

shall

ſhall make tayles (or acquittances) to every one, of every ſum of money which they ſhall receive, &c. 27. Ed. 1. cap. 2.

And yet all Fines, Amercements, Iſſues, Forfeitures, and Penalties whatſoever, ariſing before the Juſtices of Peace at their Seſſions, are to be Eſtreated by the Clerk of the Peace (out of the Records of the Juſtices) And to be Indented by him, and then to be delivered, one part to the Sheriff to levy the ſum thereby, and th'other part to be certified to the Barons of the Exchequer; And the Sheriff is accomptable for the ſame in the Exchequer, upon thoſe Eſtreats ſo certified, into the Exchequer. Stat. 14. R. c. 11.

Alſo upon Proceſs, or Eſtreats, directed to him out of any other his Majeſties Courts, the Sheriff is to levy the Kings moneys, Fines, and Amercements, &c. Wilk. 35.

The time. But now it ſeemeth that as well High Sheriffs, as Undertheriffs (of moſt Shires) in Hillary Term next after they are out of Office, are ſworn to yield up and give a juſt and true accompt to the King, and his Officers of the Exchequer, of all ſuch duties, perquiſites, and profits whatſoever (happening within the time, or compaſſe of their Office) which are due and belonging to the King, and chargeable upon them to anſwer for by reaſon of their Office. See the ſtatutes 51. H. 3. de Scaccario. Statut' de Rutland 10. E. 1. 1. R. 2. cap. 5. & 5. R. 2. cap. 11. for what things they are accomptable.

It ſeemeth that Sheriffs may make their Accompts by Atturny, Or may reſpit it by the Kings Writ. See Regiſtr. fol. 139. a. a Writ de Atturnato vicecom pro Profero faciendo admittendo.

The form of the Oath of a Sheriff for the paſſing of his Accompt.

YOu ſhall ſwear that you ſhall yield unto the Kings Majeſty that now is, a true and lawful Accompt of the iſſues and profits of your ſaid Office of Sherivalty in his Majeſties Counties of Cambridge and Huntingdon, due unto his Majeſty from the Feaſt of St. *Michael* the Archangel in the year of his Majeſties Reign, until the ſame Feaſt now laſt paſt (which is for one whole year) And in the ſame accompt you ſhall make true anſwer of all Felons goods, Owtlawed mens goods, Attainted mens goods, Weyffs, Eſtrayes, and all other profits whatſoever which hath come to your hands, your Undertheriffs hands, or any of your Bayliffs, Officers, or Miniſters hands, by reaſon of your ſaid Office. And in the ſame Accompt you ſhall charge your ſelf with all ſuch ſums of money, as you, your Undertheriff, or any of your Bayliffs or Officers for you have levyed or lawfully might have levyed to his Majeſties uſe. And in the ſame Accompt you ſhall make no petition, aſk no allowance nor diſcharge, but ſuch as ſhall be good and true. And that you do deliver a true declaration of the Viſecountiels, declaring of whom and where you do receive, and wherefore, all ſuch ſums of money contained in the ſame. And well and truely behave your ſelf in yielding the ſame accompt, as a true Accomptant ought to do without Omiſſion or concealment, So help you God.

By the ſtat. 1. E. 3. ſtat. 2. cap. 4. The Accompt of Sheriffs and other ſuch Miniſters ſhall be accept after the points of their Oath.

And by the opinion of Blage (one of the Barons of the Exchequer) Anno 6. H. 8. the Sheriff is not accomptable for the goods of Felons, Fugitives,

gitives, and the like, save in a grols sum for the ferm of the profits of the County. Kiel. fol. 173.

Neither is the Sheriff accomptable for other the profits of the County, save in a sum in grols. Ut supra Ibm.

Now what the profits of the County be. See hic. cap. 3.

If any Fines or Amercements (called Mulctæ,) be set or assessed in any of the Kings Courts upon any man; Or any arrerages of Accompts (called Reliquæ) of such things as is of Customs, Tares, Subsidyes, Tenths, Quinzielmes, and the like, the Sheriff of the Shire doth gather them up, and is accomptable in the Exchequer for the same: But for the Ordinary Rents of the Kings Lands, and most commonly for the Tares, Subsidyes, Customs, Tenths, and Quinzielmes, there be particular Receivers and Collectors, which do gather up, and answer the same into the Exchequer. Smith de Repub. 59.

By the stat. 2. & 3. E. 6. cap. 4. Every Sheriff by himself his Attorny or Deputy, shall be sworn at his day of prefixion (when he shall answer before the Lord Treasurer, and Barons, &c.) to bring and deliver into the Exchequer, Rolls of parchment of all such particular sums of money which he hath, or might have levied, making mention of what person, of what Lands, and for what cause every of the said sums be levyed.

This day of prefixion seemeth to be the day in or at which the Sheriff, by his bond Entred in the Exchequer, standeth bound to appear there to accompt for the Charge of his Office.

The Undersheriff, or his Deputy, is to attend unto, and to answer all the Oppolals in the Courts of Exchequer, Kings Bench, Court of Wards, and other his Majesties Courts, when and where the Sheriff shall be opposed, called or examined; so that the High Sheriff, his Heirs, Executors, &c. and his and their lands and goods may be discharged of and from all fines and amercements.

What other things they shall be accomptable for, appeareth in part here before, tit. Franchises, Rents, Fermes, Debts, Issues, Amercements, Fines, and Forfeitures: But yet for your better satisfaction, the experience and course of the Exchequer is to be learned.

The course of the Exchequer is said to be thus, sc. That so soon as a Sheriff hath entred into his accompt (for issues, amercements, or mean profits for intrusions and Alienations without Licence) to mark upon his head, O Ni. which is as much as, Oneratur Nisi habeat sufficientem exonerationē, &c. and presently he is thereby become the Kings Debtor, and a Debet set upon his head: And so soon as the Sheriff is become the Kings Debtor of Record ut supra, presently are the other parties become Debtors to the Sheriff, and the Sheriff in that case shall cause the debt to be levyed against those particular persons by a Constat. Kiel. 187.

But where the King by parliament shall pardon all Issues, Amercements, and Intrusions, &c. if the Sheriff after such pardon shall enter into his Accompt, without taking advantage of the pardon, here he is chargeable to the King by his own folly, and the particular persons are at liberty, and shall have advantage of the pardon, &c. Ibm.

It seemeth that Sheriffs shall not be accomptable but for their own times, and for the year of their Sheriffwick only; neither shall they be charged, in or upon their accompt, with any arrerages or duties due to the King by any of their predecessors, in the said office of Sheriffwick. See the stat. 2. & 3. Ed. 6. cap. 34. But quære if this stat. extend not only in the Sheriffs of Northumberland.

Sheriffs how they shall be charged upon their Accompt in the Exche-

quer,

quer, with the ancient Fermes and Rents of the Counties, See hic cap. 9.

Sheriffs ſhall not be charged with any other Iſſues than thoſe for which they ſhall have Warrant under the ſeal of the Exchequer. Hic cap. 11.

In all caſes of lands where the Office is found before the Eſcheator, there the Eſcheator is chargeable: But where the Office is found before Commiſſioners, there the Sheriff ſhall be charged upon his Accompt; yet but according to the yearly value which is found by the Office, and no further. Keil. 172. 173.

The manner of their Accompt: See Walter Wilkenſons Book of the Office of a Sheriff fol. 36. 37. *The manner.*

What allowances they ſhall have upon their accompt, ſee more the ſtatutes of Rutland made 10. E. 1. & 4. H. 5. c. 2. *Their allowance*

And beſides learn the uſe and courſe at this day.

All Sheriffs ſhall have ſuch tayles of Reward, and other allowances, as they have heretofore had: And they ſhall be diſcharged upon their Accompts in the Exchequer of ſuch ſums of money which they can not levy. 3. E. 6. 4.

What theſe Tayles be, ſee Dr. Cowel, verbo Tailes.

By the ſtat. 5. R. 2. cap. 13. if an Accomptant being Nihilled will ſwear that he oweth nothing to the King, he ſhall be thereupon diſcharged.

By the ſtat. 1. H. 4. cap. 11. Sheriffs ſhall have allowance by their Oath, of the iſſues of their County.

Alſo by the ſtat. 4. H. 5. cap. 2. Sheriffs ſhall have allowance upon their accompts by their Oaths, of things caſual, &c. But not of ſuch things as run in yearly Fermes, or yearly demands.

Sheriffs alſo ſhall have allowance for the wages of the Juſtices of Peace at their Quarter ſeſſions; but the Sheriffs allowance herein is but iiij s. a day a peece for eight Juſtices: And herein the Sheriff is often wronged by the Clerk of the peace of the ſame County, who receiveth all the Fynes, and payeth the wages, and if there be any ſurpluſage, puts it in his own purſe, &c. Wilk. 39. Vide hic cap. 90. & 99.

And they ſhall have allowance for their charges and expences which they ſuſtain by the Juſtices of Aſſiſe over, and by other means. 3. E. 6. cap. 4. 34. H. 8. 16.

For the ordinary charges of the Sheriffs account, ſee a particular thereof in Walter Wilkenſons ſaid Book, fol. 38, 39, 40, & 41. *Their charge.*

But Beſides thoſe ordinary charges, the extraordinary Fees and charges of paſſing the Sheriffs accompts ſeem to be ſuch, and the buſineſs it ſelf ſo tedious, as it troubleth them all (be they never ſo skilful therein:) which thing requireth a redreſs, conſidering that the Undersheriffs, or officers upon whom this burthen lyeth, are thereby not only ſtripped themſelves of almoſt whatſoever they ſhall juſtly or honeſtly ſave in their Offices, but are alſo enforced thereby to extort and wring from the ſubjects to make themſelves ſafers.

None of the Sheriffs of the Countyes of Surry and Suſſex, Eſſex and Hertford, Somerſet and Dorſet, Warwick and Leiceſter, Nottingham and Derby, Oxon and Berk: (being ſometimes joyned) ſhall pay in any Court of Record, for any duty belonging properly to the Office of a Sheriff, any other Fees or charges, than only the one half of the charges and Fees which he ſhould have payed if he had been Sherif of two of the ſaid Shires, as formerly was uſed; And their charges, and Rewards, &c. ſhall be divided. 8. Eliz. cap. 16. & 13. Eliz. cap. 22.

Sheriffs having their Quietus eſt, they, their Heirs, Executors, and Adminiſtrators, Lands, Tenements, Goods, and Chattels, ſhall be abſolutely diſcharged of their Accompts, (ſc. of all manner of ſum or ſums of money which they ſhall have levied, or received, and ſhall be pretended not to be accompted for, &c.) unleſs ſuch Sheriff ſhall be called in queſtion for the ſame within four years after the time of their accompt and Quietus eſt. Statute 21. Jacobi Regis. Cap. 5.

And every Officer that ſhall ſend out any Proces, or by whoſe default any Proces ſhall be ſent out contrary to the former ſtatute, ſhall for every ſuch offence forfeit to the party grieved fourty pounds, and beſides pay coſts and damages; the ſame to be recovered in the Kings Bench, or Court of Common Pleas.

Now this Quietus eſt muſt be a full diſcharge out of the Kings Majeſties Court of Exchequer, as well of his green Wax and Pipe ſilver, as alſo for, and upon Recuſants Lands, leiſures, and for all other Debts, Duties, and Demands, which are, ſhall, or may be charged in the ſaid Sheriffs Accompts, or which may be impoſed, for, or by reaſon of the ſaid Sheriffs Office. And the high Sheriff ſhall do well to bind his Underſheriff, to procure, and deliver to him ſuch a Quietus eſt, within one year after his Office is expired.

Totting. Nihilling. Amongſt other things, it ſeemeth behoveſull for Sheriffs or Underſheriffs, upon the making of their Accompts, to have a ſpecial care what they Tot, and whom they Nihil, that is, that they charge or diſcharge men orderly, honeſtly, and with underſtanding; for if they Tot or charge any thing, though it can never be levied, yet it will now hardly be avoided, but it muſt be payed; and if it be Nihilled, if it be iſſues of Jurors, though they be never ſo bad, and cannot be levied, yet between the old ſheriff which returned them, and the new ſheriff which Nihilled them, they muſt be payed, (by the ſtat. made 27. E. 1. c. 2.) although it be ſeven years after, if there come no pardon in the mean time. And yet where the old ſheriff returneth a Juror in iſſues, the next ſheriff cannot, nor may not return the ſame Juror Nihil, contrary to the former return of his Predeceſſor, by the book 19. H. 6. Br. Retorne 49. See hic antea fol. 75. 27. Ed. 1.

Liver del noſmes les freeholders. But to prevent this, it behoves all Sheriffs before they take upon them to return any Jurors, to get them a true and perfect book of all the ſufficient freeholders names in the Shire, and eſpecially of all thoſe which dwell in the guildable (howſoever they do of thoſe which are in Liberties, but of both is beſt, that the one may help the other,) and to return few, or none that be mean freeholders in the guildable, leſt (by the former recited ſtatute) they be enforced to pay their iſſues for them; and this they may bring to paſs, either by the help of the Juſtices of Peace in their ſeveral diviſions, who may cauſe the Conſtables of every particular Town, to bring a true Certificate (of the ſufficiency of every freeholder within their ſeveral Towns) unto the firſt Seſſions (that ſhall be holden in that County, &c.) after the election of the new Sheriff, to be to him delivered there; or elſe the new Sheriff himſelf may cauſe his bailiffs to do this within every of their Hundreds or Diviſions; and beſides the help of the Subſidy books will not be a little availeable hereunto. W. 36.

This word Totting or Totted, is a word uſed of a Debt which the forein oppoſer, or other Officer in the Exchequer noteth for a good debt to the King, by writing this word (Tot) unto it. Miniſh.

Alſo this word Nihilling, or Nihil, is a word ſet upon a Debt by the forein oppoſer in the Exchequer, when that it is illeviable, or cannot be levied. Ibid.

So

So that it ſeemeth, by Totting is underſtood Charging; and by Nihiling is underſtood Diſcharging of the party indebted, &c.

By the ſtat. 5. R. 2. Cap. 13. The accompts of Nihil in the Eſchequer ſhall be wholly put out; or if any ſuch ſhall remain, the Accomptants immediately after their Oath taken in the Eſchequer that they owe nothing to the King, they ſhall be diſcharged, &c.

And there is an Officer in the eſchequer, called the Clerk of the Nihils, who maketh a Roll of all ſuch ſums as are Nihilled by the Sheriffs upon their eſtreats of green Wax, and delivereth the ſame in to the Lord Treaſurers Remembrancer his Office, to have execution done upon that for the King. Minſh.

Forein oppoſer, Forinſecarum Oppoſitor, is an officer in the exchequer, to whom all Sheriffs and bayliffs do repair, by him to be oppoſed of their green Wax, and from thence draweth down a charge upon the ſheriffs or bailiffs, to the Clerk of the Pipe. Minſh. & *terms de la ley.* *Forein oppoſer.*

Now with this forein Oppoſer, the ſheriff muſt either Tot, Nihil, or ſet over into Liberties all the debts and ſums of money contained in the Summons of the green Wax, and in the extracts of the peace of the County where he was ſheriff: wherein let him be carefull firſt fully to learn which are good debts and which are not, and which are within Liberties and which are not, before he come to his Accompt or Oppoſals, and then to make his book of all the charge contained in his Summons and Schedules, accordingly. W. 37.

Green Wax, this word ſeemeth to be uſed for the eſtreats (of the fines and amerciaments, &c.) delivered to ſheriffs out of the exchequer, under the ſeal of that Court, to be levied in the County. ibid. *See* the ſtatutes made 42. E. 3. c. 9. & 7. H. 4. c. 3. *Green Wax.*

Clerk of the Pipe is an Officer in the Kings exchequer, who having all accompts and debts due unto the King delibered, and drawn down out of the Remembrancers Offices, chargeth them down into the great Roll; who alſo writeth ſummons to the Sheriff to levy the ſame debts upon the goods and chattels of the ſaid debtors; and if they have no goods, then doth he draw them down to the Lord Treaſurers Remembrancer to write extreats againſt their Lands. The antient Revenues of the Crown remaineth in charge before him, and he ſeeth the ſame anſwered by the Fermers and Sheriffs to the King. He maketh a charge to all Sheriffs of their Summons of the Pipe, and Green Wax, and ſeeth it anſwered upon their accompts. He alſo hath the ingroſſing of all Leaſes of the Kings lands. Ibidem. *Clerk of the Pipe.*

The Pipe Office ſeemeth to be ſo called, becauſe their Records there which be Regiſtred in their ſmalleſt Rolls, are altogether like to Organ Pipes. Minſh.

But they have another Roll there, called the great Roll (or Pipa) which is of another form. Ibid.

A Clerk of the Remembrance of the Exchequer ſhall be aſſigned to ſit with the Clerk of the Pipe, to ſee diſcharges made in the Pipe, and to inroll them in the Remembrance, to ceaſe all Proceſſes thereupon made: And the Summons of the Pipe ſhall be withdrawn according as the parties by proceſſes be diſcharged. 37. E. 3. cap. 4.

The Clerk of the Pipe, and the Remembrancers of the exchequer ſhall be ſworn, that from Term to Term (whileſt the exchequer ſhall be open) they ſhall ſee all Writs (of the great Seal or privy Seal) which ſhall be ſent to the exchequer the ſame Term, for the final diſcharge of any perſon, of any demand in the exchequer, be entred, &c. 5. R. 2. Cap. 14.

Alſo the two Remembrancers ſhall be ſworn to make every Term a

ſchedule of the names of every one that is diſcharged in their Offices, by judgement or otherwiſe, of any demands containing their diſcharge, and ſhall deliver it to the Clerk of the Pipe the ſame Term, to the intent that the Clerk of the Pipe ſhall thereof diſcharge the ſaid parties in the great Roll. Ibid.

Alſo the ſaid Clerk of the Pipe ſhall be ſworn, that he from Term to Term ſhall require the ſame ſchedules, and the ſame by him ſo received, he ſhall diſcharge the ſaid parties in manner aforeſaid: And in the ſame manner the ſaid Clerk of the Pipe ſhall certifie in writing to the ſaid Remembrancers, the diſcharge made in his Office, to the intent that a man diſcharged in one place ſhall be diſcharged in all other places of the ſaid exchequer. 5.R.2.cap.14.

Officers, &c. in the Exchequer, vide Tots ceux in *Minſh.*

There be two Officers in the Exchequer, called Parcel makers; Theſe make the Parcels of the Exchetors accompts, &c. vide Minſh.

Pipe (Pipa) ſeemeth to be a Roll in the exchequer, otherwiſe called the great Roll. Minſh.

Clerk of the Pipe, quid ſit Minſh.

Clerk of the Eſtreats. Ibid.

Clerk of the Pell. Ibid.

Clerk of the Pleas. Ibid.

Clerk of the Nihils, quid Ibid.

Forein Oppoſer, quis Minſh.

Remembrancer { Of the King. Of the Treaſurer. Of the firſt Fruits.

Tellers, *ſont 4 in Leſchequer lour Office* vi. Minſh.

Treaſurer, ſc. Lo. Treaſurer, vi. Ibid.

Writer of the Tallies, is a Clerk to the Auditor of the receipt, and writeth upon the Tallies the whole Letters of the Tellers bills.

Remembrancers.

Remembrancers of the exchequer (Rememoratores) be three Officers or Clerks; one called the Kings Remembrancer, ſtat. 35.El.c.5. And another called the Lord Treaſurers Remembrancer, upon whoſe charge it ſeemeth to ly, that they put all the Juſtices of that Court (as the Lord Treaſurer, and the Barons) in remembrance of ſuch things as are to be called on, and dealt in the Princes behalf. The third is called the Remembrancer of the firſt fruits, concerning whom, See the ſtat. 37.E.3.c.4.& 5.R.2.ſtat.1.c.14.& 15.

The Kings Remembrancer entreth in his Office all Recognitances taken before the Barons, for any the Kings debts, for appearances, or for obſerving of Orders. He alſo taketh all bonds for any of the Kings debts, for appearances, and for obſerving of Orders, and maketh out Proces upon them for the breach of them. He writeth Proces againſt the Collectors of Cuſtoms, Subſidies, and Fifteens, for their accompts. All informations upon penal ſtatutes are entred in his Office; and all matters upon Engliſh bills in the exchequer chamber are remaining in his Office. He maketh the bills of Compoſitions upon penal ſtatutes; taketh the ſtalements of debts; maketh a Record of the Certificate delivered to him by the Clerks of the Star-Chamber of the fines there ſet, and ſendeth them to the Pipe. He yearly (in Craſtino Animarum) readeth in open Court the ſtatute for the elections of Sheriffs, and giveth thoſe their oaths. Ibidem.

The

The Treaſurers Remembrancer maketh Proces againſt all Sheriffs, Eſcheators, Receivers, and Baylifs for their accompts. He maketh Proceſſe of Fieri facias, and extent, for any debts due to the King, either in the Pipe, or with the Apoſtas. He maketh Proces for all ſuch Revenue as is due to the King by reaſon of his Tenures: He maketh a Record, whereby it appeareth whether Sheriffs and other accomptants pay their profers due at Eaſter and Mich. he maketh another Record, whereby it appeareth whether ſheriffs and other accomptants keep their dayes of preſtion, (or dayes, or times appointed:) All eſtreats of fines, iſſues, and amerciaments ſet in any Courts at Weſtminſter, or at the Aſſ. or Seſſ. are certified into his Office, and are by him delibered to the Clerk of Eſtreats to write Proces upon them: he hath alſo brought into his Office all the accompts of Cuſtomers, Controllers, and other accomptants, to make thereof an Entry of Record. Ibid.

The Remembrancer of the firſt fruits taketh all Compoſitions for firſt fruits and tenths, and maketh Proces againſt ſuch as pay not the ſame. Ibid.

The Clerk of the Eſtreats is alſo a Clerk belonging to the Exchequer, who termly receiveth the Eſtreats out of the Lord Treaſurers Remembrancer his Office, and writeth them out to be levied for the King, he alſo maketh Schedules for ſuch ſums eſtreated as are to be diſcharged. Ibid.

The word Profers, is the time appointed for the Accompts of Sheriffs and other officers in the Exchequer, which is twice in the year, (Mich. & Eaſt.) 51. H. 3. hic antea. Or elſe the word Profers may ſeem to ſignifie the Accompt it ſelf, or the points or things for which they are to Accompt.

Note that if the ſheriff ſhall ſeize the goods of one that is outlawed, or for other like cauſe, and when he maketh his accompt, he doth not accompt for the ſame, &c. it ſeemeth the owner of the goods may have an action of Treſpaſs againſt the ſheriff for ſuch ſeizing or taking of his goods, (and ſhall recover the goods, or the value thereof in damages) for that the ſheriff muſt plead that he hath accompted for them: and if he ſhall not accompt for the ſame, he ſhall be ſaid to be a treſpaſſor ab initio, ſee 3. H. 7. 3. b. & 21. H. 7. 23. alſo ſee 18. E. 4. 3. 7. H. 4. 5. & 14. H. 6. 5.

If the ſheriff (or his officers) ſhall gather or levy the Kings Rents, Debts, or other Duties, and ſhall not accompt for the ſame in the Exchequer upon his accompt, the ſheriff is liable both to the King, and to the action of the party, &c. beſides the danger of his Oath.

And therefore in an action of Treſpaſs againſt a ſheriff for taking the Pl. Cattel, &c. the ſheriff juſtified that he diſtreined for Rent due to the King, and that he had accompted for the ſame Rent in the Exchequer. Liber Intrac. tit. Treſpaſs. But otherwiſe it is, if the time be not come, wherein the ſheriff is to accompt.

Note, that the high ſheriff is accomptable (for all things belonging to his Office) to the King; And the Underſheriff ſhall yield an accompt to his high ſheriff. 11. R. 2. fitz. Accompt. 48.

14. Car. 2. c. 21. *Sheriffs eaſed in paſſing their Accompts in the Exchequer.* *Vide the Appendix.*

For the better help of Sheriffs, I have here again ſhortly ſet down their dangers, &c. that ſo by their care and diligence they may the better prevent and eſchew the ſame.

The

CAP. 121.

The Dangers, Forfeitures, and Punishments of Sheriffs, for things done, not done, or misdone by them, or by their Officers. Cap. 123.

Albeit that the care of our Parliaments hath alwayes been, that choice should be made of such Persons for this Office of the Sheriff, as should be men of good sufficiency, such as might attend to execute this Office (for the good of the King and his people) and such as needed no Reward for their travel and pains in that behalf (as may appear by the several Statutes here before recited,) yet partly in regard of their great charges by them undergone, as well in their attendance and execution of their places, &c. as also of the great sums of money wherewith they are charged upon their accompts; and partly in regard that it is not possible that the Sheriffs themselves should do execution of all things belonging to their offices, but that they must use the help of divers and sundry other inferior officers and persons therein; therefore the Laws and Statutes of this Realm have not only rewarded the high Sheriffs themselves, but also their inferior officers with some small allowances, availes, and fees, as may appear here before. And on the other side, for that the negligence, remisnes, and misdoing of men, put, and placed so highly in trust, if it should not sometimes be corrected by due chastisement or punishment, it would breed not only too much dulnesse or carelesnes in these chief officers themselves, but also much extortion, oppression, and other wrongs, both to the King and his people, from them, but especially from their inferior officers and ministers. Therefore the Laws and Statutes of this Land have likewise inflicted due punishments and pains, not only upon the high Sheriffs themselves, but also upon their inferior officers; and in many cases upon the high Sheriff himself, for the faults and defects of his under officers; as may partly appear here before throughout this book, and more particularly in this that followeth.

And therefore in some cases the sheriff, &c. shall be amerced, and in some cases shall pay a fine, or forfeit to the King. In other cases he shall be imprisoned; and in some cases may be indicted as an offendor against the King in the highest degree; and in other cases shall be liable to the action of the party grieved, and chargeable to pay his debt or damages.

Escape. And first note, that the Sheriff of every County shall have the keeping of, and shall be chargeable, and charged with the common Gaol, and Prison of the same County (where he is sheriff) and with all the Prisoners therein; and must put in such Gaolers for whom they will answer, by the statutes of 14. E. 3. c. 10. & 19. H. 7. c. 10. Co. 4. 34. And therefore the high Sheriff himself shall be answerable for the escape of a Felon, suffered by his Gaoler, and (by some opinions) may be indicted of Felony for the same, if the escape suffered by his Gaoler were voluntary. See the Presidents to this purpose in Lamb. v. v. 5. and in West. M. 1. 6. H. 7. 11. & 10. H. 7. 16. Co. 9, 98.

De felon. And yet sir John Savadge being a Sheriff in fee, was (in 5. M.) indicted in the Kings Bench for the escape of two Felons suffered by himself, felonicè & voluntariè, &c. and his office was only seised therefore, &c. as it seemeth in Dyer fol. 151. & Keil. 192.

But yet note that sir John Savadge was not there put to answer, upon the Indictment by way of Arreignment, but upon a Scire facias, &c.

other.

otherwiſe if he had been arraigned and found guilty, Judgment of death might have been given againſt him for that Eſcape. See Keil. 195. 196.

And though he which hath the cuſtody of the Gaol, ſhall be charged with the Eſcapes of Priſoners, yet if he be not ſufficient, then reſpondeat Superior, ſc. the Sheriff from whom the Gaoler had the cuſtody of the Gaol committed to him. Vide Co. 9. 98.

But the Dr. and Student cap. 42. maketh this difference, ſc. where the eſcape was by negligence, there the Gaoler or Sheriff may be charged therewith; but if it were a wilfull Eſcape in the Gaoler and ſo Felony, the Sheriff ſhall not anſwer to the Felony; but then it ſeemeth he may be fined to the value of his goods, for that the Eſcape was voluntary. See Stamf. 35. H.

And indeed ſuch an Eſcape though wilfully ſuffered by the Gaoler, or other the Sheriffs Officer, without the Sheriffs knowledge or conſent, may ſeem but a negligent Eſcape in the Sheriff, and ſo but fineable in the Sheriff, (or a cauſe to ſeiſe his Office being in Fee) and to be Felony only in the Gaoler or Officer, who voluntarily ſuffered the Eſcape. See Cromp. 252. b. Dr. & St. 137. & quære inde.

If the Sheriff ſhall bayl and deliver a Priſoner, who is in Priſon, or under arreſt for Felony or ſuſpicion of Felony, this is a voluntary Eſcape, and ſo ſeemeth to be Felony in the Sheriff; Except where he doth it by virtue of the Kings Writ to him directed for that purpoſe.

If the Sheriff ſhall keep a Priſoner (which is committed for Felony) in his own houſe, quære if this be not an Eſcape, for that the Gaol is the Kings Priſon, and there ſuch as be Priſoners for matters concerning the King, ought to be kept. See Cromp. 184.

Where a Felon is taken priſoner by the Sheriffs Bayliff in a Town, and in going to the Gaol the priſoner eſcapeth, the Eſcape ſhall be adjudged upon the Sheriff, and not upon the Town. 3. E. 3. Fitz. Cor. 337.

By the ſtatute of 3. E. 1. cap. 9. if any Sheriff for any cauſe ſhall conceal any Felony done within their County; or ſhall not attach or arreſt ſuch Felons within their County, as they may, they ſhall be impriſoned for one year, and fined at the Kings pleaſure. *Felon nient attach.*

If any Sheriff or Gaoler ſhall denie to receive any Felon, by the delivery of any Conſtable or townſhip, or ſhall take any thing for receiving of ſuch, they ſhall be fined by the Juſtices, &c. 4. E. 3. cap. 10.

If a Felon be arreſted by a Conſtable, and carried to the Gaol of the County, and the Gaoler will not receive him, and the Conſtable letteth him go, and the Gaoler alſo, and ſo he eſcapeth, this is an Eſcape in the Gaoler, for that in ſuch caſe the Gaoler is bound to receive him by the hand of the Conſtable without any precept of the Juſtice of Peace: and quære if it ſhall not be ſaid to be a voluntary Eſcape, and ſo Felony in the Gaoler.

But otherwiſe it is if a common perſon arreſts another upon ſuſpition of Felony, there the Gaoler is not bound to receive him without a precept of ſome Juſtice of Peace. *Terms del Ley.* tit. Eſcape.

If one be found in Arrerages before Auditors, and the Auditors bring the Accomptant to the next Gaol, and the Gaoler will not receive him, the Auditors may let the Accomptant go at liberty, and notwithſtanding the Maſter or Lord of ſuch Accomptant ſhall have his action of debt againſt the Gaoler, and if he be not able to anſwer the debt, the Sheriff ſhall be anſwerable, according to the ſtat. Lectur.

Every

Every Sheriff ought to certifie in a Kalender the names of all their prisoners which be in their Gaol for Felony, at every Assises or Gaol delibery, sub pœna 5 l. hic 143.144.

Levy money pur Escape.

If the Sheriff, or any other, do take or levy any thing for the escape of any Felon, before it be adjudged by the Justices in Eyre, Justices of the Kings Bench, or before some other Justices that have authority to enquire thereof, he shall restore to the party, or to him that payed it, as much as he received, and besides as much to the King. Westm 1. 4. & 31. E. 3. cap. 14. Et hic cap. 14. 3. E. 1. c. 4.

Escape del dettor.

If the Sheriff do suffer any Bailiff, Chamberlain, servant, receiver, or other accomptant to go at liberty, which is committed to prison by Auditors; or if the Sheriff shall bail, or otherwise deliver them without the consent of their Master, the Sheriff shall answer the whole debt, or damage which the Master hath sustained by the said accomptant. 13. E. 1. c. 11.

So if a Gaoler shall suffer any such Bailiff, &c. or other accomptant which is committed to prison by Auditors, to go at liberty, or to escape, if the Gaoler be not able to pay and answer the debt, the Sheriff that committed the custody of the Gaol unto him, shall be answerable. Ibid.

And so it seemeth in all cases of Escape, the Gaoler or under officer who hath the actual possession of the Gaol or Office, shall answer for all escapes: But if they have not sufficient wherewithall to answer, respondeat Superior, sc. he which committed or granted the custody of the Gaol unto him shall answer it. Co. 9. 98.

If the Sheriff arrest a man by force of a Capias, awarded to bring him at a certain day returnable, if there the plee shall be Discontinued by the death of the King, or by the not coming of the Justices, or by any other means, then the Sheriff may suffer the same person so arrested to go at large (of his own authority) for that that Record is determined: But otherwise it is where the Sheriff hath arrested one by force of a Capias ad satisfac' for here the Record alwayes remains. Kiel. 2.

And if a man be taken in execution upon a Capias ad satisfac', and is committed to the Gaol, and the Sheriff suffereth him to make an escape, the Sheriff is chargeable for the whole debt, hic fol. 8. 50. 56. (*Uncar si le vic. ne returne le bre, le plt poet aver novel Execution vers le Dettor; & pur ceo le vic. poet forbeare de Retorne ceo; & de compound ove le plt.* Co. 3. 52.)

So if his Undersheriff, or any of his Bailiffs having taken one in execution, suffereth the prisoner to escape; or if the prisoner of his own wrong breaketh away, or if the prisoner be rescued by strangers: in these cases the Sheriff himself shall be charged for the escape, and shall be chargeable to pay the whole debt: for the act or default of their Undersheriffs, Deputies, or Bailiffs, shall charge the Sheriff himself. See the Stat. 1. R. 2. c. 12. & 7. H. 4. c. 4. Fitz. 93. c. & Br. Officer 24. & 33. & hic antea fol.

And it is no good return for the Sheriff, quod mandavit ballivo itineranti, *que respondit que il arrest le partie, & rescous est fait*; for this was the arrest of the Sheriff himself: And if the arrest were upon a Capias ad satisfaciend', or Capias utlagatum after Judgement, and that a Rescous be made upon the arrest, whereby the party arrested escapes, the Sheriff himself shall be charged for the escape, &c. except it were by the Kings enemies: but if it had been by Bailiff of a Franchise, the return had been good, and there a Non omittas should have gone out. Dyer. 241.

Note, that in case of such a Rescous, the Sheriff must take his remedy by

by by action of the Caſe, againſt them which made the Reſcous (Dyer. 241.) and they many times little worth, and ſo the Sheriffs remedy in ſuch caſe is very eaſie.

Uncar ſi un ſoit in Execution ſur un Condempnation, & le Priſon happe d'eſtre enfreint per Enemyes le Roy, ou per ſudden tempeſt, ou fire le quel eſt le act de Dieu, ou per tiel force ou vehement power que le Officer ou Gaoler ne poet reſiſt eux, donq; ceo eſt bon plea, &c. Mes ſi le priſon ſerra enfreint per Rebells, ou traitors deins le Realme, autrement eſt, pur ceo que ſil poet aver remedy ouſter envers eux come avant dit, 33. H. 6. fol. Dyer. 66. pl. 15.

A man attainted of Felony and impriſoned for it, C. brings an action of debt againſt him, and hath Judgement and Execution againſt A. and after A. got his pardon, and the Gaoler ſuffered him to go at large, whereupon C. brought an action of Debt againſt the Sheriff for the eſcape, and it was judged maintainable: ſo that notwithſtanding that A. were attainted, yet he was alſo in Execution for the Debt. This was one Crofts caſe, and ſo adjudged in the Exchequer tempore Eliz. Rñe.

Now what other acts ſhall be ſaid to be an eſcape, which ſhall charge the Sheriff. *Eſcape del detter.*

Crom 204. b. The Sheriff or his Officers, have one in execution for debt, and after carrieth the priſoner into another County to talk and take order with his creditor, this is an Eſcape. Vide Dyer. 296.

Crom. 206. a. The Sheriff, &c. having one in execution for debt, takes bonds of the priſoner, and of divers others, to pay the ſaid debt or ſum at a certain day, to the Sheriffs ſon, or other friend, and then lets the priſoner go at large, this is an Eſcape.

The Sheriff upon a Capias ad ſatisfac' returneth a Cepi corpus, but hath not the body at the day, &c. he is chargeable for an Eſcape, hic 69. 82.

So if upon a Fieri fac' he returneth Fieri Feci, but hath not the money at the day, he is chargeable for the money, hic 69.

The Sheriff (or his Officers) arreſteth one upon a Capias ad ſatisfac', and do not return the Writ, this is an Eſcape. Cromp. 207. a. & hic fol.

The Sheriff, &c. hath one in execution for debt, and then licenſeth the priſoner to go at liberty for a time, and then to return, who returneth accordingly at his day, yet this is an Eſcape. Co. 3. 44.

If the Sheriff, &c. ſhall ſuffer the priſoner (which is in upon an execution) to go at large, although it be by bayl, or mainprize, or by baſton (ſcz. with a Keeper) before the priſoner hath agreed for his debt, this is an Eſcape; for ſuch priſoners ought to be kept in ſalva & arcta cuſtodia. See the ſtatutes 1. Rich. 2. cap. 12. & 7. Hen. 4. cap. 4. & Co. 3. 43. 44. & Plo. 36. 37.

See Dyer. fol. 278. where a man being in execution for debt in the Marſhalſey, was ſuffered by Gawdy Deputy of the Priſon (under the Duke of N. Marſhal of England) to go into Norff. with a keeper for a certain time, and the priſoner came and returned again to the Priſon at the day aſſigned, the plt brought his action of debt againſt Gawdy, upon this eſcape, & it was adjudged againſt Gawdy, and the plt recovered, &c.

Note, that by Law, a priſoner who is in upon an Execution, ought not to be ſuffered to go at large or at his liberty, neither within the priſon, nor without the priſon, although it be with his keeper. And anno 24. H. 8. in the Star-Chamber, all the Keepers of Priſons in London were enjoyned upon pain of 100. l. not to ſuffer any of their priſo-

ners to go at liberty, within or without the Priſon. Dyer. 249.

But if a Priſoner who is in upon an execution, ſhall of his own head and wrong go at liberty, and after ſhall return again, and ſhall yield himſelf Priſoner, or ſhall be taken again by the Sheriff or Officer upon freſh ſute (before any action be brought by the Plaintiff againſt the eſcape) this is no eſcape. See Co. 3. 44. & 52. & hic fol. 57.

And ſo if one in execution for debt, ſhall of his own wrong eſcape into another County, and the Sheriff or his Officers ſhall there take him again upon freſh ſute, and before any action brought, &c. this is no Eſcape. Co. Ibid. Br. Eſcape 4. & 35.

If one in execution for debt, be ſet at large by the act of any of the Kings Courts, (ſcz. by the Kings writ from out of any of the Kings Courts) this is no Eſcape which ſhall charge the Sheriff, except it be in ſome ſpecial caſes. See 38. E. 3. fol. 8. & 2. E. 4. 8. Cromp. 215. & hic fol. 58.

See the caſe of a Burgeſſe of the Parliament delivered by a Writ of Priviledge, &c. Dyer. fol. 60. & hic cap. 21.

And yet upon a Writ de Homine repleg', the Sheriff delivers a priſoner who is in for Rediſſeiſin, the Sheriff ſhall be amerced, hic fol. 46.

So if the Sheriff or Gaoler ſhall ſuffer his priſoner who is condemned in arrerages before Auditors, to eſcape, or ſhall deliver him upon a writ de Homine repleg' or otherwiſe without aſſent of his Maſter, the Sheriff or his Gaoler ſhall pay the Debt, hic cap. 21. & Dr. & Sr. 134.

Le Stat. de Weſtm̃ 2. cap. 11. *done action vers le Gaoler que leſſa hors del priſon cẽy que eſt commit a lui per arrerages de accompt, Et per le Equity de ceo Stat. action de Dett giſt vers cheſcun auter garden ſur cheſcun auter Condempnation in Dett, ou auter action, ſi leſſa le party committ alenx ſur tiel Condempnation d'aler alarge,* Plo. 37. a. & 178. a Br. Parliament. 19.

Et ſi le Gaoler ou garden n'eſt ſuffic' reſpondeat ſuperior ſuus, &c. *Iſſint que apres que tiel priſoner eſt un foits Eſcape, le Creditor ne unques demandra ſes deniers de le party qui fuit in priſon, mz. vers le Gaoler ou Viſcount.* Tamen *lofficer poet luy reprender apres.*

And if one in execution for debt be ſet at liberty, or ſuffered to go at large, by the Sheriff or other Officer, upon the commandment of any of the Kings Courts, without writ, this ſeemeth to be an Eſcape. See hic fol. 58.

Si un in execution pur det, ſoit ſuffer daler alarge per le vic' ou auter officer, ſur commandement del Roy meſme, ſans briefe, ſemble deſtenu eſcape. See Dyer 297. hic fol. 58.

A man in execution within the Cinque ports, was brought up to London, &c. upon a priv ſeal, or the like, this is no Eſcape. 30. H. 6. fol. 6. Br. Eſcape 44.

A man is in execution for debt, and a woman being Warden of the Fleet marrieth the priſoner, this is an Eſcape, for that he cannot be his own priſoner, nor a priſoner to his wife. Pl. 37.

A woman is in execution for debt, and the Sheriff or Gaoler marryeth her, this ſeemeth to be an Eſcape.

Le garden del Fleete leſſa ſon Office al un per ans, & puis eſt eant en priſon pur Dett en Londres, *& remove en Common Bank per* Habeas Corpus, *& la pur ceo Execution, & auxi pur anter, eſt commit al priſon del Fleete, Et apre, Leſſee per ans ſurrender a luy, ou le terme finye, per ceo le Execution eſt diſcharge: uncar en le primer Caſe de Surrender, Dett giſt (ſur ceo Eſcape en Ley) vers le Leſſee: Mes en l'anter caſe* quære *vers que laction de Dett ſerra. Iſſint lon un in Execution, & puis le Office (del Fleete) diſcend a luy, Ore eſt Hors de Execution;* tamen quære *ſil ſerra per ceo charge en Dett.* M. 29. Eliz.

Note that if a Priſoner being in upon an execution, ſhall eſcape of his own wrong, without the conſent of the Officer, there the Officer may take him again at any time, hic fol.

Note alſo that if a man who is in execution upon a ſtatute, or recogniſance, ſhall happen of his own wrong to eſcape, yet the Sheriff may extend his Lands and goods upon the ſame ſtatute, &c. 33. El. Alſo ſee Co. 3. 44. & 5. 86.

If the Sheriff ſhall ſeiſe any Land, or do many other things without Writ, Commandment of the Juſtices, or other lawful Warrant, he may ſoon bring himſelf into danger, ſee hic cap. 126. & cap. 6. 7.

If any Sheriff, &c. ſhall levy any of the Kings debts, without ſhewing to the parties the eſtreats of the ſame under the Seal of the Exchequer, they ſhall loſe to the party grieved treble damages, and alſo make fine to the King. 42. E. 3. c. 9. & 7. H. 4. cap. 3.

If any eſtreat of iſſues ſhall be gathered of any perſon, other than of ſuch as by vertue of the ſaid eſtreats ſhall of right be chargeable, or charged therewith; the gatherer thereof ſhall loſe five Marks to the party grieved, and five Marks to the King. 27. El. cap. 7.

3 E. 1. c. 19. A Sheriff who hath received the Kings debt, if at this next accompt he ſhall not diſcharge the Debtor, he ſhall pay to the Plaintiff thrice as much as he received, and alſo ſhall be fined to the King. See hic antea. *K. Debtor.*

13. El. c. 6. If any Sheriff, &c. ſhall make any Warrant for the Arreſting, Attaching, or Summoning of any perſon without an Original Writ, &c. they ſhall be committed without bayl, untill they have payed 10. l. to the party grieved, beſides coſts and damages, and alſo 20. l. to the King.

23. H. 6. c. 10. If any Sheriff, &c. ſhall omit any Arreſt, or ſhall ſhew any eaſe or favour to any perſon Arreſted, or to be Arreſted (at any mans ſute) for any Reward. *Arreſt.*

Or ſhall take any fees, or other thing, for any Arreſt, &c. more than their due: See hic fol.

Or (upon any Arreſt) ſhall take any Obligation by colour of their Office, but onely to the Sheriff himſelf, and by the name of his Office, and upon condition onely to appear according to the Writ or Warrant:

Or ſhall detain any priſoner, or perſon by them Arreſted, being bayleable, after ſufficient ſureties offered:

Or if the Sheriff hath one in priſon, or committed to him untill he do find ſureties for the peace, or good behaviour, and he ſuffereth him to go at large before he be bound with ſureties, &c. he ſhall forfeit 40. l. by the ſtat. of 23. H. 6. Cromp. 139. 140.

Or ſhall do any other thing contrary to the ſtatute of 23. H. 6. c. 10. in any point, they ſhall loſe to the party grieved treble damages, and ſhall alſo forfeit for every ſuch offence 40. l. to the King and Informer.

Action ſur le Caſe vers Powel *vic. & declare que le Plt deliver* Capias *ad ſatisfac. al dit* P. *vers* Owen, *Et que apres le delivery & devant le retorne del bre. le dit* O. *fuit ſovent foits en le company del dit* P. *il conuſant le dit* O. *d'eſtre m. le party, &c. Et uncar nēy ad luy Arreſt, mz. ad Retorne* Non eſt inventus, *Et fuit tro. pur le Plt. Et per Cur. le Plt ad deux Cauſes de actions vers* Powel, *lun le Non arreſter, Et lauter le faux retorne de* Non eſt inventus. Hill. 15. Jacobi Regis.

If any Sheriff ſhall impriſon any man for any matter inquirable in their Torn, except ſuch as have been indicted there by enqueſt, &c. an action of falſe impriſonment lieth againſt the Sheriff. 13. Edw. 1. cap. 13. See the Statute 1. Edw. 4. cap. 2.

If any Sheriff ſhall ſuffer any barrettors, or maintainers of quarrels in their County Courts, they ſhall be grievouſly puniſhed. 3. E. 1. c. 32. See hic fol. 16.

If any Sheriff, &c. have arreſted or impriſoned, or cauſed any fine or ranſom, or amerciament to be levied of any perſon, by reaſon of any indictment, or preſentment made in the Sheriffs Torn, without Proces from the Juſtices of Peace for the ſame firſt obtained, they ſhall forfeit one hundred pounds, &c. 1. E. 4 c. 2.

If any Sheriff (or his Deputy who keepeth the Sheriffs Torn) hath not brought in, or certified ſuch indictments and preſentments (taken in the Torn) to the Juſtices of Peace at their next Seſſions, they ſhall forfeit forty pounds. hic fol. 155. Ibid.

Juſticiar. non poteſt puniri pro re per ipſum facta judicialiter, ſed Officiarii ut vicecomes & alii Officiar. de recordo erunt punitii. 2. R. 3.

Action ſur le caſe giſt vers vic. & autres Officers de Record, ſilz font faux Record, Ou ſilz cauſe faux Entree d'eſtre fait, vel hujuſmodi. 9. H. 6. Cromp. 122.

Iſſent ſi vic. fait faux Retorne. Co. 5. 32.

Sheriffs, &c. procuring, or ſoliciting ſuits in their Courts, ſhall make fine to the King, and yield treble damages to the party grieved. 13. E. 1. cap. 36.

If any Sheriff, &c. ſhall enter into their books, any plaints (for debt, treſpaſſe, or covenant, &c.) in any mans name, not being preſent at the Court, either in his own perſon, or by his ſufficient and honeſt Atturney or Deputy: 11. H. 7. c. 15.

Or ſhall enter any more plaints, than the plaintiff ſuppoſeth that he hath cauſe of action for:

Or if the Sheriff ſhall ſuffer the plaintiff to enter more than one plaint, for one treſpaſſe, debt, contract, or cauſe:

Or if the Sheriff ſhall not cauſe the plaintiff to find pledges to purſue his ſaid plaint, &c. ſuch perſons as are known there in that County:

Or if the bayliff of the Hundred ſhall make default in Warning, or Executing any Warrant againſt any Defendant in the Sheriffs Court:

Or if the bayliffs, or other perſon ſhall gather the Sheriffs Amerciaments (or Shire Amerciaments) without a book or eſtreats Indented betwixt the Sheriff, and two Juſtices of Peace, &c.

Or if the bayliffs, or gatherers of the Sheriffs Amerciaments ſhall take, or gather more money than is forfeited and contained in ſuch Eſtreats.

Every Sheriff, bayliff, and other officer, offending in the premiſſes, and being thereof lawfully convicted, &c. ſhall forfeit to the King forty ſhillings for every ſuch default.

If any Sheriff, or any other, ſhall bayl, or let any go at large by ſure-

ty,

ty, that is not Bayleable, if he be Sheriff, or Officer of Fee, he ſhall loſe his Fee and Office for ever: And if they be not Officers of Fee, whoſoever they be, they ſhall be fined by the Juſtices of Gaol delivery. 3. E. 1. c. 15. 27. E. 1. c. 3. Fit. 251. i. And by the ſtatute of 23. H. 6. c. 10. the Sheriff bayling one who is not bayleable, ſhall forfeit 40. pound to the King, and treble damages to the party grieved. *Bailement.*

If any underſheriff, or bayliff, of ſuch as have fee, for keeping of Priſons, do it contrary to their Lords will, or any other bailif being not of fee, they ſhall have three years impriſonment, and make fine, &c. Or ſhall not bayl or deliver. Ibid.

23. H. 6. c. 10. If any Sheriff, &c. ſhall detain, or ſhall not bayl and deliver a priſoner that is bayleable, after that the priſoner hath offered ſufficient ſurety, he ſhall be grievouſly amerced to the King, by the ſtatute 3. Ed. 1. cap. 15. And by the former ſtatute of 23. H. 6. he ſhall loſe treble damage to the party, and forty pound to the King and Informer.

And if any Sheriff, &c. ſhall take any Reward for the deliverance of any ſuch as are bayleable, he ſhall pay double to the priſoner, and ſhall be in the mercy of the King.

If the Sheriff will not obey a lawfull Superſedias, but will arreſt the party, &c. an action of *faux* impriſonment lieth, &c.

So if the Sheriff (or other Officer) hath taken the party before the Superſedeas came to his hands, and then will not deliver him.

Sheriffs, and their Officers are alſo puniſhable for extortion in taking any fees more than their due, ſee hic fol. *Extortion.*

And if they take any fees, &c. contrary to the ſtat. of 23. H. 6. they ſhall loſe to the party grieved his treble damages, and beſides ſhall forfeit 40. pound to the King, &c. Ibid.

Note that this Extortion in Sheriffs and other Officers is the greater Offence, in that it is not onely contrary to their Oaths, and ſo Perjury in them, but alſo it is a kind of Robbery committed by them, by colour of their Office, and as great a loſſe to the Kings ſubjects (by them ſo wronged) as to ſteal their goods from them.

If an Officer cometh to a man, and telleth him that he is Utlawed, when the Officer knoweth that he is not Utlawed, and by colour thereof the Officer taketh his goods, this is felony, by the opinion of Mr. Cock in his Reading.

So if the Sheriffs Officer ſhall levy any duty for the King without Warrant. Ibidem.

And yet there ſeemeth a difference where the Officer hath authority by reaſon or colour of his Office, and exceeds his authority, there it is but extortion and fineable; As where the Sheriff or Officer hath a precept to levy 20. pound of the goods of I. S. and he levieth 40. pound, this is extortion: But where he hath no authority it ſhall not there be intended that he doth that by colour of his Office, but in ſuch caſe it is Felony in the Officer. Ibid.

And again this difference may be taken, ſc. where the Officer without Warrant or Authority ſhall levy any duety for the King, and ſhall after accompt for the ſame in the Exchequer, or otherwiſe pay the ſame to the Kings uſe, there the Officer ſeemeth chargeable but as a Treſpaſſor; But if he ſhall convert the ſame to his own private, or proper uſe, there it is Felony.

Sheriffs ought to array their Pannels for the Aſſiſes, ſix days before, &c. ſub pœna forty pound. *Juries.*

Alſo they ſhall deliver Copies indented of ſuch Pannels as they return for Trials, to each party demanding the ſame, upon pain of forty pound. See hic cap. 85.

If

If the Sheriff ſhall not return Pannels, as they be reformed by the Juſtices, they ſhall forfeit twenty pound. hic ibm.

If any Sheriff, or any of his Officers, ſhall return upon any Jury, any of their Officers or ſervants, they ſhall loſe to the party grieved treble dammages, and ſhall alſo forfeit forty pound to the King and Informer. 23. H. 6. c. 10. hic. cap. 85.

If any Sheriff, &c. ſhall return upon any Jury, any perſon that is decrepit, or diſeaſed: or ſuch as dwell out of the County; or men inſufficient, or laboured, &c. they ſhall yield dammages to the party grieved, and be amerced to the King: ſee hic cap. 85.

If any Sheriff ſhall return upon any Jury, any perſons ſuſpect and of evil fame, and be thereof convict, they ſhall be puniſhed by the Judges of the Aſſile, &c. 20. E. 3. cap. 6.

If any Sheriff, &c. ſhall take any reward to ſpare any Juror, or for not warning, or not returning of any perſon to be ſworn as a Juror, &c. they ſhall forfeit five pound to the King and Informer, 27. Eli. cap. 6.

If any Sheriff, &c. ſhall return any Juror without a true addition of his dwelling, &c. he ſhall forfeit five marks to the King, and five marks to the party grieved. 27. Eli. cap. 7. vide hic cap. 85.

They ſhall forfeit twenty ſhillings for every Hundreder, if ſix be not returned, &c. hic cap. 85.

They ſhall forfeit five pound, if they take any reward, &c. to ſpare any Juror, hic cap. 86.

They ſhall forfeit twenty pound for not returning ſufficient Jurors to enquire of Riots, &c. hic cap. 87.

Iſſues. If any Sheriff, &c. ſhall levy any Iſſues without Warrant, &c. he ſhall yield treble dammages to the party grieved, and be fined to the King, hic cap. 90.

If the Sheriff, &c. ſhall return iſſues upon one who is not ſufficient, he himſelf ſhall be charged therewith, ſee hic cap.

If the Sheriff, &c. ſhall return any Juror, or any Iſſues upon any Juror, &c. who was not lawfully ſummoned, &c. he ſhall loſe to the Juror double ſo much as the iſſues loſt by ſuch Juror, &c. hic cap. 90.

If the Sheriff, &c. ſhall not return due iſſues upon every Juror, the Sheriff ſhall forfeit five pound in ſome caſes, and in ſome caſes twenty pound, and in other forty pound, hic Retorn of Iſſues.

If the Sheriff, &c. ſhall levy any iſſues, other than of ſuch perſons as of right are chargeable, he ſhall forfeit five marks to the King, and five marks to the party, hic cap.

If the Sheriff, &c. ſhall return too ſmall iſſues upon the Defendant; or ſhall return no iſſues, he ſhall be amerced, &c. Fitz. Amercement 3. Pr. 86.

Oath. If any High Sheriff ſhall exerciſe his Office before he hath taken his oaths, &c. he ſhall be fined in the Star-Chamber, and be impriſoned, &c. hic fol.

If any Underſheriff, or other the Sheriffs Officers, &c. ſhall exerciſe their Offices, before they have taken their oaths, &c. they ſhall forfeit forty pound, &c. to the King and Informer, hic fol. 175.

If any Underſheriff, or other Sheriffs Officers, &c. ſhall do or commit any act or thing contrary to their oaths, they ſhall loſe to the party grieved treble dammages. 27. Eliz. cap. 12. hic 175.

If the High Sheriff ſhall not perform his Oath concerning his Office, it ſeemeth he is fineable in the Star-Chamber. See hic fol.

Their Office. If any Sheriff ſhall let or Ferm his County, or any of his Bailewick, he ſhall forfeit forty pound to the King and informer, &c. 23. H. 6. c. 10.

c. 10. hic fol. Beſides his danger to be puniſhed in the Star-Chamber for perjury.

If any Sheriff, Under-ſheriff, Sheriffs Clerk, ſhall abide in their Office above one year, they ſhall forfeit to the King and Informer two hundred pound, hic fol.

If any Sheriff or Under-ſheriff, which hath been ſo by one whole year, ſhall be in that place again within three years next enſuing, they ſhall forfeit, &c. two hundred pound.

If the Sheriff be not reſident within his County, he is puniſhable.

If the Sheriff ſhall not appoint Deputies in every Court at Weſtminſter, before he return any writ, he ſhall forfeit forty pound to the King, &c. and treble dammages to the party grieved. hic fol.

If he ſhall not appoint four Deputies (at the leaſt) in his County, to make Replevies, he ſhall forfeit to the King, for every month, &c. five pound, hic fol.

If he ſhall not put in ſufficient ſureties (by Recogniſance) in the Exchequer, &c. before he exerciſeth any part of his Office, he ſhall forfeit one hundred pound. See hic fol.

If he ſhall neglect to execute his Office, by reaſon of reſiſtance; Or ſhall return that he could not execute the Kings Proces for reſiſtance, he ſhall be amerced, hic fol. 19. 136.

If the Sheriff ſhall not enter a Franchiſe to execute the Kings Proces, where there is default in the Bayliff of the Franchiſe, the Sheriff ſhall loſe to the party grieved double dammages. See hic fol.

If the Sheriff ſhall not in every behalf execute the Kings Proces or other Warrant directed to him, he ſhall be puniſhed. As

If the Sheriff ſhall Remove a force, and ſhall not impriſon the Offendors, here for not performing all which he is commanded by the writ or precept, he ſhall be puniſhed. Cromp. 73.

If the Sheriff ſhall ſerve part of the Proces, viz. he ſhall diſtreyn certain Jurors, and ſhall command the Bayliff of the Franchiſe, to diſtreyn the other, he ſhall be amerced, for the commandment was entire. 19. H. 6. fol. 38. Vide hic cap. 39.

If the Sheriff ſhall do more than he is commanded by the Kings writ, he is alſo puniſhable. Cromp. 74. & 162.

As if the Sheriff ſhall remove a force upon the writ of Northampton, and ſhall put the party (put out) in poſſeſſion again, he ſhall be therefore puniſhed in the Star-Chamber; for he had no authority by the writ but onely to remove the force. ibm.

Alſo in divers caſes if the Sheriff ſhall not execute the Kings writ, an Attachment ſhall go out againſt the Sheriff, which ſhall be directed to the Coroners of the ſame County, &c.

If the Sheriff, &c. or his Officers, ſhall diſtrein (for the Kings debt, *Diſtreſſe.* or otherwiſe) any plow, cattel, or ſheep:

Or ſhall take any exceſſive diſtreſſes:

Or ſhall drive any diſtreſſes too far:

Or ſhall ſell any diſtreſſe (taken for the Kings debt) within fifteen days.

Or ſhall not ſhew, the Proces of the Exchequer, for the levying of the Kings debt, upon demand:

Or ſhall not deliver the diſtreſſe, the party offering ſufficient ſureties, &c. before the return of the writ:

In all theſe former caſes the party (as it ſeemeth) may have an attachment upon the Statutes, or elſe an action of treſpaſs, againſt the Sheriff, or Officer. See hic fol. 23.

If

If the Officer upon a Replevy ſhall take one mans Horſe, Bullocks, or other thing for anothers, he is a treſpaſſer, hic fol.

If the Sheriff, &c. ſhall make Replevy of any goods, or cattel, and ſhall not take pledges, de Proſequendo, Ac de returno habendo, &c. he ſhall anſwer the price, &c. hic & Fitz. Amercements fol. 2.

If the Sheriff, &c. ſhall ſeiſe the Lands, or goods of one man for another man, &c. the party grieved ſhall recover double dammages, hic 36. Br. officers 8. & 10.

If the Officer upon a Fieri facias ſhall deliver in execution, any goods which are not the proper goods of the Defendant, he is a treſpaſſer, &c. hic fol. 58.

Arreſt. If the Sheriff, &c. ſhall arreſt or attach one man for another, he is a treſpaſſer, &c. hic fol. 47.

If the Officer ſhall arreſt one without a Warrant, though after he hath a Warrant, &c. yet he is a treſpaſſer. hic fol. 47.

If the Officer ſhall arreſt any Miniſter in the Church, &c. he ſhall be impriſoned, and yeeld recompence to the party. hic fol. 48.

If upon an arreſt to be done, the Sheriff or his Officer ſhall take any thing to omit the Arreſt, or otherwiſe not to do their duty, they ſhall forfeit forty pound, and ſhall yield to the party grieved treble dammages. 23. H. 6. cap. 13.

Every Knight of the Parliament, Burgeſs, Baron of the Cinque ports, and other perſons called to the Parliament, ſhall have the priviledge of the Parliament during the Seſſions of Parliament; ſo as whoſoever ſhall arreſt any of them during that time ſhall be impriſoned in the Tower (by the Meather Houſe whereof ſuch perſon is, &c.) and ſhall be fined: And the Sheriff, Gaoler, or other Keeper, &c. ſhall alſo be impriſoned and fined, if they ſhall not deliver him, when as a Serjeant of Arms ſhall come for him by the commandment of the Houſe. Dyer 61. Cromp. *Author des Courts* 9. 10.

And yet if one that is utlawed ſhall be of the Parliament Houſe, and a Capias utlagatum be ſued out againſt him, and delivered to the Sheriff, he may ſafely arreſt him thereupon; for this writ is, quod non Omittas propter aliquam libertatem, So that the party utlawed can not be diſcharged thereof by any liberty or Priviledge (for he which is out of the Law, and out of the protection of the Law, cannot have the Priviledge of the Law.) But a perſon priviledged by being of the Houſe, can not be arreſted by a writ or upon a writ of execution, or the like. Per Anderſon & Periam Juſtices ter. Hill 31. Eliz.

If the Officer ſhall not arreſt a man when he may (he having Warrant therefore) an action of the caſe will lie againſt him, and the party grieved ſhall thereby recover in dammages all that he ſhall loſe through ſuch default of the Officer. hic fol. 123.

Alſo the Sheriff ſhall be puniſhed for his delay, in not executing of Proces delivered to him, &c. hic.

If upon a Capias ad reſpond. the Sheriff ſhall arreſt the body but returneth not the writ, the party arreſted may have his action of falſe impriſonment againſt the Sheriff. And if the Sheriff ſhall return the writ but ſhall not bring in the body at the day, then he ſhall be amerced. Kiel. 3. hic cap. 37.

Retorne. So if a man be taken upon a Capias, and yet the Sheriff returneth, non eſt inventus, an action of falſe impriſonment lyeth againſt the Officer that took or arreſted him. Br. officer. 40. 13. E. 1. c. 39. Fitz execution. 248.

Alſo upon a writ directed to the Sheriff upon the ſtatute of 31. H. 6. cap. 9. for the inforcing of women to enter bonds, &c. if the Sheriff ſhall not

not duely execute the ſame, he ſhall forfeit three hundred pound. See the ſtatute at large. & P. women 15.

Note, that the Sheriff ought to execute the Kings writ at his peril, although reſiſtance be made, Otherwiſe he ſhall be grievouſly amerced, And beſides the party ſhall have his action againſt him, if the writ be not executed, for he might have taken the power of the County to have aided him, &c. See hic 16. 65.

The Sheriff ſhall be amerced, for not returning, miſreturning, or falſe returning of a writ. See Fitz. Amercement. 4. & 18. 5. Eliz. 23. & 6. R. 2. cap. 4. & hic fol. 44. 50. 70. 71. Dyer. 198. Co. 5. 90.

Alſo an action of the Caſe will lye againſt the Sheriff if he ſhall make a falſe Return, by Roads Juſtice anno 28. Eliz. with whom agreeth the Book of Entrees, tit. *Accon. ſur le Caſe in Retor. div.* 1. & 2.

Or the Sheriff, for not returning, miſreturning, or falſe returning of a writ, may be indicted. See Fitz. Juſt. of Peace fol. 67. The form of an Indictment againſt the Sheriff, for returning, quod Nihil habet, ubi pars ſufficiens eſt.

Alſo in the Regiſtr. par. 2. fol. 31. 32. 67. & 82. you ſhall find ſeveral writs (directed to the Coroners) ad Venire facias vicecomitum, ad reſpondendum Quare non returnavit brevia; or ad reſpond de falſo retorno; or ſuper returno Trade, &c.

He ſhall be amerced for imbeazling the writ; or for returning of another, which was not the writ. Fitz. Amercement. 5. Diſceit. 11. & Br. Amerc. 45.

The Sheriff imbeazled an Exigit which was delivered to him of Record, and wrote two others, and returned them without ſealing, and for this faulty he was amerced at 100. pound. 5. E. 4. Br. Retor. 95.

A Sheriff returning a Mandavi ballivo libertatis, where there is no liberty, he ſhall be puniſhed as a diſſuberiter of the King, hic fol.

A Sheriff maketh his precept to one which is not Bayliff of the Franchiſe, &c. he ſhall be amerced. 38. aſſ. 13.

A Sheriff maketh his precept ballivo Libertatis, where the King is a party, he ſhall be amerced.

If a writ de Excom capiendo (being delivered of Record to the Sheriff or to his Deputy in Court) ſhall not be duely returned; or that by any other negligence or default ſhall be uſed in not well ſerving and executing of the ſame writ, Then the Juſtices ſhall aſſeſſe ſuch amercement upon the Sheriff, as to the ſaid Juſtices ſhall be thought meet, &c. 5. Eliz. c. 23.

And if the Sheriff maketh a falſe return upon any Capias in a writ of Excom' Capiendo, &c. he ſhall forfeit to the party grieved forty pound, hic cap. 36. 5. Eliz. cap. 23.

The Sheriff amerced at fifty marks for his falſe return of an Exigent, hic 75.

A Sheriff was fined at forty pound by the Juſtice of Niſi prius, for not returning the writ de Habeas Corpora Jurator, &c. 20. H. 6. fol. 33.

But upon a writ to enquire of dammages, if the Jury will find no dammages, and the Sheriff returneth accordingly, though ſuch return be not good, yet the Sheriff ſhall not be amerced for this default of the Jury. Br. Retorn. 20. Fitz. Retor. 66.

Sheriffs miſreturning, or not returning any writ, to them directed and delivered, concerning the levying of the Kings debt, rents, revenues, or iſſues, &c. they ſhall pay ſuch fines and amerciaments, as

ſhall be aſſeſſed upon them by the chief Officers of the Kings Courts of Revenue, &c. 7. E. 6. c. 1.

A Sheriff returneth a writ without ſetting his hand thereto, he ſhall be grievouſly amerced, hic fol. 74.

Sheriffs ſhall be amerced for the default of their Under-ſheriffs, or Bayliffs, in making falſe, or inſufficient Return. See hic titulo retorne fol.

Sheriffs not making due election of Knights for the Parliament, or returning Knights, &c. of the Parliament falſly, or contrary to the ſtatutes, ſhall be impriſoned for one year, without bail, and beſides ſhall be impriſoned for one year, without bail, and beſides ſhall forfeit to the King one hundred pound, and to the party choſen Knight, &c. and not returned another hundred pound, hic 131.

Sheriffs not attending the ſervice for the Aſſeſſing of wages of the Knights of the Parliament ſhall forfeit xl. s.

If they ſhall not Aſſeſſe every Hundred, and Town, thereto according to the ſtatute, they ſhall forfeit thirty pound.

If they ſhall levy upon any Town, more than is ſo Aſſeſſed, they ſhall forfeit thirty pound.

So if they ſhall not deliver the ſame, &c.

Sheriffs ſhall be puniſhed in the Star-Chamber for their untrue demeanings in making of Pannels, and other untrue Returns; or for taking undue Fees, or Bribes. 3. H. 7. cap. 1. P. Courts 4.

Purveyor. If the Sheriff upon Requeſt, ſhall not aid, and aſſiſt him from whom any Cator, of any Noble man, or other ſubject, ſhall take any Goods, or Carriage againſt the will of the Owner, the Sheriff ſhall forfeit to the King, and party grieved, &c. xx. pound. hic fol. 15.

Riots. If the Sheriff or underſheriff ſhall not joyn with the Juſtices of Peace, in executing the ſtatute of 12. Hen. 4. againſt Rioters, ſcz. to arreſt the Rioters; to make a Record of that which they ſhall ſee ſo done; and to impriſon the Offendors, they ſhall forfeit one hundred pound. hic fol. 15.

If the Riot cannot be found by the Juſtices of Peace, &c. then within one moneth, the Juſtices of Peace, and the Sheriff or Underſheriff, ſhall certifie the fact and circumſtances to the King, &c. upon pain of every of them to forfeit one hundred pound. hic fol. 15. 16.

If the Riot be not found, by reaſon of any maintenance, or embracery, &c. Then the Juſtices and Sheriff or Under-ſheriff, in the ſame Certificate, ſhall alſo certifie the names, and miſdemeanors of thoſe maintainers and embracers, upon pain of every of them making default to forfeit xx. pound. hic fol. 15.

Sheriffs which ſhall not Arreſt all Perſons that ride, or go Armed, &c. 2 E. 3. c. 3. ſhall be puniſhed by the Juſtices of Goal delivery, &c. hic fol.

If the Sheriff ſhall not execute the Precepts of Commiſſioners of Sewers, &c. they may aſſeſſe and impoſe fines, &c. upon the Sheriff. hic fol.

Servants and Laborers departing into other Shires, if the Juſtices of Peace do grant out any Proces againſt them, the Sheriff is duely to execute ſuch Proces upon pain of twenty pound. 2. H. 5. c. 4.

If the Sheriff ſhall not duely execute all Proces and Precepts, as ſhall come to him from the Juſtices of Peace, he is puniſhable, &c. See hic. 144.

Note that the Juſtices may commit the Sheriff to Priſon for an offence done before them, and they may make or appoint another Officer (for the time) to keep him. Martin. 8. H. 6. 60.

A bay-

A Bayliff being indicted of extortion, his Rod was taken from him, and he was committed to Priſon without bayl, &c. 42. Aſſ. p. 5. Br. Commiſs. 15.

Sometimes the Sheriff or other Officer ſhall be puniſhed for executing their Warrant.

As where the Court (out of which the Prores or Warrant ſhall come) hath not Juriſdiction of the cauſe, and yet ſhall grant out Prores, &c. and the Sheriff or other Officer ſhall execute the ſame, they are puniſhable. See hic fol. 45. 46.

If the old Sheriff, after that he is diſcharged, ſhall make his Warrant to arreſt another, and the Bayliff ſhall execute this, a Writ of falſe impriſonment lieth as well againſt the old Sheriff, as the Bayliff which executed ſuch his Warrant, &c. hic fol. 9. & 47.

CAP. 122.

Where the Sheriff for his default, ſhall be Amerced to the King, and alſo ſubject to the action of the party; and ſo twice puniſhed for one default.

IF the Sheriff (upon a Capias ad ſatisfac': or upon the Exigent) returneth Cepi corpus, and yet hath not the body at the day, he ſhall not onely be amerced, but the Plaintiff alſo may have an action of deceit againſt the Sheriff, by an Original Writ; Or elſe the Plaintiff may ſue againſt the Sheriff in the Exchequer upon his accompt. Br. Retorne 31. & 107.

The Sheriff upon a Fieri facias, returned quod fieri fecit x.ſ. parcell' de xx. l. in breve ſpecificat', &c. And at the day had not the money, there the Court might amerce him, and beſides after a new Sheriff was made, a Scire facias went out to the new Sheriff, againſt the old Sheriff, to have execution againſt him, &c. 9. E. 4. Br. Retorne 55.

If any Writ ſhall be delivered to the Sheriff, &c. And the Sheriff ſhall make return thereof, but ſhall not ſummon or warn the Defendant; Or otherwiſe ſhall not ſerve the writ as he ought, by reaſon whereof the Plaintiff or Defendant ſhall be in any ſort damnified, he ſhall be amerced, and beſides the party grieved may have their action of the caſe, &c. againſt the Sheriff.

If any Sheriff, or his Officer (by colour of his office) without ſpecial Warrant, &c. ſhall diſſeiſe any man of his freehold, the diſſeiſee may have his Writ of Novel diſſeiſin, where he ſhall recover double damages, and beſides the Officer ſhall be grievouſly amerced to the King. 3. E. 1. cap. 24.

Note that the words of this Statute are, Colore Officii, For there is a difference to be holden, where the Sheriff ſhall do a thing Colore, or virtute Officii, and where virtute brevis; For where he doth a thing virtute brevis, that is a ſufficient Warrant to him, and which he is bound to obey, Otherwiſe it is where he ſhall do it Colore Officii p Choke 7. E. 4. 17.

So where the Sheriff ſhall do a thing by the commandment of the Juſtices he is excuſable. Fitz. Aſſiſe 373.

Mez ſi le vic. ſeiſe ter. ſanz brief, ou Office, ſemble que il eſt diſſeiſor ſur ceo ſtatt. de Weſtm. 1. cap. 24.

Iſſint ſur Office trove niet ſuffic. Come lon les quantities del ters ne ſont expreſs, Ne les ſervices per quenx ſont tenus, ſi le vic. ſeiſe tiels terrs, ſur tiel inſufficient Office, dicitur que il eſt diſſeiſor; mez ſi le inſufficiency ſoit per default de forme, anterment eſt.

Si bre. vient al vic. dextender ters in A. *& il extend ters in* B. *il eſt diſſeiſor.* Vide Fitz. verdit. 29.

Iſſint ſi bre. vient a deliver ters que diſcend, & le vic. livera les terrs perehaſe. Fitz. Aſſiſe 378.

Iſſint ſi bre. vient de Extender ters qneux fuer al A. *& il extend les terrs qneux le feme* A. *ad in Dower, Et as quenx el avoit title de Dower devant le Extent, le vic. eſt diſſor.*

Vide Fitz. Aſſiſe 162. *le Officer adjudge diſſor. que liver le terr per garrant ſanz noſmer cēy que recover.*

Si un ſoit Endite de felony devant le vic. (en ſon Torne) per que le vic. ſeiſe ſon terr, & apres eſt trove devant le Juſtices que il ne fait le felony, le vic. eſt diſſor.

Si apres plea remove Hors del County Court, le vic. voile proceder in ceo & agard Execution, il eſt diſſor. Fitz. *Action ſur Caſe.* 39.

A man was indicted before the Sheriff (in his Lorn) whereupon his Lands and Chattels were ſeiſed by the Sheriff, and by Devon, the Sheriff had no Warrant by the indictment to ſeiſe the Lands, and therefore adviſed the party to bring his Aſſiſe, &c. Fitz. Aſſiſe 373.

And therefore Sheriffs before they ſeiſe any mans Lands, muſt have good Warrant, or cauſe ſo to do. Vide hic fol. 19. 25.

Vide plus. Br. *Action ſur le caſe.* 48. 51. 53. & 121. & hic fol. præcedente.

CAP. 123.

Where the Sheriff for his Default ſhall be ſubject to the Action of either party, *ſcz.* of the Plaintiff and Defendant.

IF the Sheriff taketh one upon a Capias, and returneth not the writ, the Plaintiff may have his remedy by force of the ſtat. 13. E. 1. c. 39. and ſhall recover his damages, And the Defendant may have his action of falſe impriſonment. hic 70.

So if the Sheriff, &c. Arreſts one upon a Capias, and after returneth Non eſt inventus.

Upon a Fieri facias the Sheriff levieth the money, but neither returneth the writ, nor payeth the money to the Plaintiff, here the Plaintiff may charge the Sheriff in an action of accompt, and the Defendant in an action of treſpaſſe. hic 70.

If any Sheriff, &c. ſhall return upon any Jury, any perſons which are not ſufficient, &c. Or contrary to the ſtat. the Sheriff ſhall be ſubject to the actions of the parties Plaintiff and Defendant, as alſo of ſuch Jurors ſo returned. hic 120. 121.

CAP. 124.

Where the new Sheriff ſhall have an action againſt his Predeceſſor for his falſe Return.

The old Sheriff returned a Venire facias Jurat', and then was diſcharged, and Proces continued to the diſtreſſe, and the new Sheriff returned upon a Juror, Nihil habet, and was thereforе amerced, for that he ought to have purſued the firſt return of his Predeceſſor, and to have ſhewed the ſpecial matter, &c. And therefore if the Juror were not ſufficient at the firſt, the new Sheriff ſhall have an action of deceit againſt his Predeceſſor. 19. H. 6. Br. Retorne 49. See plus Br. *Action ſur le caſe.* 53.

Where the Lord or Bayliff of a Franchiſe, ſhall have their action againſt the Sheriff. See fol. 72. 73. 181.

CAP. 125.

The abuſes practiſed by ſome Sheriffs, Under-ſheriffs, and Bayliffs, &c.

Sheriffs have obtained often times upon their accompts, outragious allowance, under pretence of the Kings works and buſineſſes. Star. 51. H. 3. *Accompts.*

They have (for reward, prayer, fear, or affinity) concealed Felonies: or have neglected to attach them. 3. E. 1. c. 9. *Felons.*

They have procured Priſoners to become appravers, ſcz. to appeal harmleſſe and guiltleſſe people of felonies; thereby either to get ranſom of ſuch appealed perſons, for fear of impriſonment; or elſe out of malice, or other cauſe: See the ſtatute 13. E. 1. cap. 12. & 1. E. 3. cap. 7.

They have feigned perſons to be indicted of Felonies, or other Treſpaſſes in their Lords, and have impriſoned them, and have exacted money from them, by colour thereof. 13. E. 1. cap. 13. *Feigned Indictments.*

They have procured Commiſſions and general Writs, and by colour thereof have made, and taken divers Enqueſts, and indicted people at their will, And then have taken fine and ranſom of them to their own uſe, and ſo delivered the perſons indicted, not bringing them before the Kings Juſtices, &c. 28. E. 3. cap. 9.

They have ſolicited and procured ſutes in the County Courts, compelling thereby poor men, &c. to follow their Courts, untill they have made fine with them at their wills. 13. E. 1. cap. 36. *In their Courts.*

11. H. 7. c 15. They have uſed to enter in their books more plaints than the plaintiff ſuppoſed he had cauſe of action for in their County Courts.

As alſo more plaints than one for one debt, treſpaſſe, contract, or cauſe, to the veration of the ſubjects.

Ibid. Alſo many times in plaints entred before them in their Counties, the defendants are never attached, ſummoned, or warned, and ſo for want of knowledge of ſuch ſutes againſt them the defendants are unjuſtly puniſhed and vexed.

They

They have uſed to enter plaints in their ſaid Courts, in the names of perſons that were dead.

At this day they uſe in their ſaid Court, that if the Deff. be ſummoned, and thereupon maketh default of appearance, preſently to grant out a Levare facias, to levy the Dammages, and Coſts, &c. whereas they ſhould continue the Proces againſt the Deff. untill he appear, &c. a Diſtreſs infinite (hic cap. 12.

And the Levare fac' ought not to be granted out until the matter be found and adjudged againſt the Deff. and not upon his default.

Alſo upon the Levare fac' the Sheriff or his Bayliffs do uſe to ſell the goods ſo levyed, whereas the Execution in this Court is only to diſtreyn the goods of the Deff. and to put and keep them in pound, &c. untill the debt be ſatisfied. hic cap. 12.

They have taken fines of the parties, for not pleading well, &c. Fitz. 270. 52. H. 3. 11.

Bailment. They have bayled perſons not baileable, whereby notable Felons and Offenders have eſcaped.

They have kept and detained in priſon perſons baileable, only to grieve or vex them, Or elſe to gain and get money of them. 3. E. 1. cap. 15.

They have ſent ſtrangers to take diſtreſſes (whereas none but Bayliffs ſworn and known ought to take diſtreſſes) thereby grieving their neighbours, and exacting money of them thereby. 13. E. 1. c. 37.

Juries. They return men upon Juries, which are decrepit, diſeaſed, and dwelling out of the County;

And ſometimes they return an unreaſonable number; hic fol. 122.

And uſually they return men of the pooreſt and meaneſt ſort, leaſt able to diſcern the cauſes in queſtion, and moſt unable to bear the charges of attendance, ſparing, and letting the rich men, and moſt able and ſufficient Freeholders to abide at home; and all this they do to get money and bribes.

And whereas in any Iſſue joyned for the tryal of any matter above 40. s. the Jurors ought to have land, &c. to the yearly value of 40. s. whereof four muſt have lands, &c. to that value in that County; The Sheriff notwithſtanding (if they favour not the Plaintiff) will return ſuch Jurors as ſhall not have 40. s. in the Shire; or elſe ſuch as ſhall not have 40. s. in the Hundred; or ſuch as are Coſins to the Deff. or Plaintiff; or within the Diſtreſs of the Deff. and Plt. And theſe are great miſchiefs; for the party can not have proceſs againſt other Jurors; Nor he can not challenge any for the cauſes aforeſaid, until the Jury do appear.

They often return upon Juries, perſons ſuſpect, and of evil fame: and ſometimes perſons nominated to them; taking gifts and rewards for ſuch purpoſe.

They have returned upon Juries their Officers, and ſervants.

Auter Abuſes de Sher. in lour Retornes.

Nota, que in divers bres, the Sheriff will let forward whole ſute he pleaſeth: And put back and delay ſuch as ought lawfully to proceed. *Come* in a writ of Summons, *les paroles ſont*, Si. T. B. fecerit te ſecurum de clamore, &c. ſometime Summoner. pro bonos Summonitores, &c.

Here

Hereupon if the Sheriff favour not the demand. He will return.

1. *Q'le ddt n'ad tro Pledges de perſue le Suite: Et per ceo le bre eſt perde On il ne retorne.*
2. *Frq; un Pledg: Et ce eſtre Error ſi le ddt proceede.*
3. *Q'le ddt, ne nul pur luy admre a luy le ter in demand, que eſtre ſuppoſe deſtre in* B. *Et que la eſtre nul titl ville ne hamblett.*
4. *Q' le tenant eſtre mort.* Dz Iſtud bre mihi venit adeo Tarde,&c.
5. *Q' anter home eſtre tenant del ter, &c.*
6. Mandavi ballivo libertatis, qui nullum dedit reſponſum,&c. Dz Tarde,&c.
7. ——*Et nota, que per ceux faux Retornes, le ddt ad petit remedy. come le vic. poet eſtre amerce pur ceux.* hic cap. 20. 37.

And as the Sheriff may make theſe Returns, and ſuch like, upon the firſt writ (ſc. *ſur le Original*) ſo may he do upon any other writ of what nature of action ſoever it be.

2. *Lon ſur le Original bre, le vic. retor le deff. Summon per common Summons, lon in verity il ne fait nuqs Summon, Si le tent fait default al jour del retour il perder ſes ters ſanz aſcun remedy: car il ne poet aver accõ de Diſceit vers les Summoners, Car nul titl* in rerum natura; *ſanz que nul triall poet eſtre in le action.*

3. *Lon per le Ley, in perſonal accions, cheſcun home que ad ters in le County ou l'accion eſtre prot, al value de 40 s. doet eſtre retor ſufficient, Et la ſur proces de Diſtreſs d'eſtre agard ſur ſuz default, Si n'ad ters le vic. eſtre de retor luy Nul. Uncar ſi le vic ne favor le plt il voet retor le deff. ſuffic. (lon ad nul ter,) Et donq; le plt poet aver nul Proces de Utlary vers le deff. Et ſic le plt eſtre ſanz remedy; Eo que il que n'ad ters ne care pur le loſs de Iſſues.* Acè contra *le vic. poet retour le deff. nul lon il ad ters ſuffic. ſil intend de vex le deff. vel per arreſt de ſuz Corps, ou dammage de Utlary; Et le party ad ul remedy, mz in accõ ſur le caſe vers le viſcount.*

4. *Sur le* Capias, *ſi le vic. retor* Non eſt inventus, *comt que le deff. ſoit dayly en ſuz company, le plt ad frq; petit remedy.*
Uncar 5. E. 4. & 7. Ed. 4. 31. *Le plt poet aver accõ ſur le Caſe, pur niet arreſter lui, lon il puiſſoit.*
Si le vic. arreſt le deff. Et retor non eſt inventus, Accõ gt. 13. H. 6. 3.

5. *Si apres arreſt fait, le vic. retor Reſcons fait per certain perſons Le deff. (ſur tel Retorne) fera fine: on eſtre utlage, eſt cẽ tantum ſur cẽ faux retorne.*

Their Bayliffs often times do warn men to appear upon Juries, without any Warrant from the Sheriff: And this they uſually do to ſuch as will not ſend to, or meet at, their Feaſts, or otherwiſe bribe them.
Sometimes alſo they ſummon or warn men to appear upon Juries, and yet do not return their names.
They are ſlack in arraying their Pannels; Or delivering coppies thereof.
They extort and take undue fees. See the ſtatute 23. H. 6. 8, 9. & 11. *Extortion.*
They levy more than is contained in their eſtreats. 11. H. 7. cap. 15. 7. H. 15. c. 7.
They levy iſſues double, ſcz. the ſame iſſues of divers perſons, being of one name, &c. 27. Eliz. 7.

They

They levy the ſame iſſues, fines and amercements, of the ſame men two or three times. 7. H. 4. cap. 3. 7. H. 4. c. 3.

They receive the Kings debts, but diſcharge not the debtor.

Under-ſheriffs, and other the Sheriffs Officers) do uſually practiſe as Atturneys.

They alſo continue in their places many years together: both which are contrary to the Laws; And beſides by reaſon thereof the Kings ſubjects dare not purſue them, nor complain of their extortions and oppreſſions.

Arreſt. They Arreſt men ſometimes without any Warrant or Procez.

Sometimes they make Warrants, &c. without any Original.

They wilfully omit to arreſt one when they may.

After arreſt, (for bribes) they ſhew favour; Or wilfully ſuffer the party to eſcape.

Upon a Capias utlagatum, if they take the defendant, they often take money of him, and ſo let him go again, when they have alſo formerly taken money of the Plaintiff to take the Defendant.

The like they will do, when they have taken one upon a Capias ad ſatisfac' or other execution, &c.

And ſo both the King, and the ſubjects are thereby much wronged.

They are ſlack in Returning of Utlawryes, concealing the ſame.

The Bayliffs do often gather up divers duties upon the Under-ſheriffs Warrants directed to them; and do purſe up the ſame; ſo as the ſame duties are many times demanded again of the parties, in another Sheriffs time: And therefore it ſhall be ſafeſt for the parties, not to pay ſuch duties to the Bailiffs, but to the Under-ſheriff himſelf, and to get his acquittance upon the payment thereof.

Laſtly, the King is many times much deceived and wronged between theſe Under-ſheriffs, and the Bayliffs, of all his waifs, ſtraies, felons goods, outlaws goods, amercements, fines, and other profits due to the King, which many times are by them either taken up and imployed to their own uſe, Or ſecretly compounded for, but never accompted for.

But for the manyfold wrongs, ſlights, extortions, oppreſſions, and other abuſes practiſed, eſpecially by ſome Under-ſheriffs and Bayliffs, I muſt confeſs my reading little, and my experience leſs able to diſcover them: And if any well-experienced Under-ſheriff (out of his love to the common good of the Country) would put his helping hand not only to the further diſcovery of the foul abuſes practiſed in this kind, but alſo to the further perfecting of this whole Book, it would be gratum opus.

Deus

Minimus Magnus.

Vicecomitis Officio Supplementum.

AN

APPENDIX

OR

SUPPLEMENT

By way of Addition to, and Amplification of the Learned

TREATISE

Of *MICHAEL DALTON* Esq;

Touching the

OFFICE and AUTHORITY

OF

SHERIFFS:

CONTAINING

A Collection of the Statutes relating to Sheriffs made since Mr. *Dalton's* Writing, which are in Force and Use at this day; several special Returns of Writs, and the Expositions, Judgments, and Resolutions of the Reverend and Learned Judges in the several Courts at *Westminster*, upon divers Statutes, Cases, and Questions in Law, concerning Sheriffs and their Officers, and several other new Matters.

With a new and copious Table to the whole Book; wherein the defects and imperfections of the old Table are supply'd and amended.

LONDON,
Printed for *John Bellinger*, in *Cliffords-Inn-Lane*. 1670.

To the

READER.

Reader,

SInce the time wherein the Learned and Judicious *Michael Dalton* Eſq; Collected that laborious Treatiſe, Intituled *Officium Vicecomitum*, ſeveral Acts of Parliament have been made (whereby Sheriffs are either enjoined the performance of new Matters, or eaſed in ſomething wherein before they were burthened,) and divers Expoſitions, Reſolutions, and Judgments, have been given in the ſeveral Courts of *Kings-Bench*, *Common-Bench*, and *Exchequer*, by the Grave and Learned Judges of the ſame Courts, upon divers Statutes, Caſes and Queſtions in Law, concerning the Office and Duty of Sheriffs and their Officers. I have, at the ſpecial inſtance of ſome Friends, endeavoured to Collect them together out of the many Volumns of the Law, and put them under proper Titles, for the eaſe, benefit, and profit of the Gentry of this Land (on whom the burthen of this Office lieth;) but eſpecially of the immediate High-Sheriffs, and Under-Sheriffs; who by their diligent peruſal, and careful obſervation of the whole Matter of this and the former Treatiſe, may be directed to run through their ſeveral Offices

without hazard to themſelves, or oppreſſion of the People. The new Matters are added by way of Supplement: And to the end the Matters in the whole Book may be eaſily and ſpeedily found out (many of the uſeful Matters in the foregoing Part being either difficult to find, or wholly omitted out of the old Table, I have compiled a new Table thereunto, and have added therein the Matters compriſed in this Supplement, putting both together under one and the ſame reſpective proper Titles. And for diſtinction, whereby the Matter in this Supplement may be known from the reſt, I have put this Mark (*) to it throughout the Table. Such as it is I commend to thy Reading and Practiſe, and leave to thy favorable Conſtruction, preſuming that this, as what Mr. *Dalton* hath before Written, may tend to thy uſe and benefit, and the publick good; which is all I deſire.

Farewell.

CAP. I.

Account.

SECT. 1.

Statutes made ſince Mr. *Daltons* time touching Sheriffs, which are in force and uſe at this day.

11 Car. 2. By the Stat. againſt Conventicles, 22 Car. 2. It is amongſt other things Enacted, That the monies Levied upon Offenders againſt that Stat. ſhall be paid into the hands of the Juſtice or Juſtices of the Peace, who gave the Warrant or Warrants for levying the ſame to be by him or them diſtributed, one third part to the uſe of the Kings Majeſty his Heirs and Succeſſors, to be paid to the high Sheriff for the time being, in manner following, (viz.) The Juſtices of Peace ſhall pay the ſame into the Court of Quarter-Seſſions, which Court ſhall deliver the ſame to the Sheriff and record the delivery thereof; which Record ſhall finally diſcharge the ſaid Juſtices and charge the ſaid Sheriff, which charge and diſcharge, ſhall be certified into the Exchequer together and not apart.

The Kings monies levied upon this Act ſhall be paid to the Juſtices of Peace and by them to the Quarter Seſſions, and from thence to the High-Sheriff.

SECT. 2.

Sheriffs eaſed in their Accompts, and in their Tables and Servants in time of Aſſiſes.

14 Car. 2. 21. By the Stat. 14 Car. 2. cap. 21. It is ordained that no Sheriff of any County or Shire within this Realm, ſhall in the time of Aſſiſes, held for the ſaid County or Shire during his Sheriffalty keep or maintain, or cauſe to be kept or maintained any Table or Tables for receipt or entertainment of any perſon or perſons reſorting to the ſaid Aſſiſes, other than thoſe that ſhal be of his own family or retinue; nor ſhall make or ſend in any Preſent to any Judge or Judges of Aſſize for

Sheriffs to keep no Tables in the time of Aſſizes.

Sheriffs not to have above 40 nor under 20 Men-Servants at the Aſſizes, except Sheriffs in Wales, and there not under 12 Men-Servants.

Penalty 200 l.

his or their proviſion, Nor give any gratuity to his or their Officers or Servants or any of them; And that no ſuch Sheriff ſhall have more than forty men-ſervants with Liveries attending upon him in the time of the ſaid Aſſizes, nor under the number of twenty men-ſervants in any County whatſoever within the Kingdome of England, nor under the number of twelve men-ſervants in any County within the Dominion of Wales upon pain that every Sheriff offending in any of the premiſſes ſhall forfeit for every default two hundred pounds:

Proviſo touching London, Middleſex, Weſtmerland, *and Sheriffs of any City and County, or Town and County.*

But by Proviſo in the ſame Stat. nothing therein above-mentioned ſhall extend or any way concern the Sheriffs of London and Middleſex, the Sheriff of Weſtmerland, or any Sheriff of any City and County, or Town and County, within the ſame, but that they ſhall or may do, as heretofore hath been there uſed and accuſtomed.

Sheriffs eaſed in paſſing their Accompts in the Exchequer.

Seizures of Lands remaining charged Michaelmas 1660

Remembrancer ſhall make Copies of Seizures and Inquiſitions

Writ or Commiſſion ſhall be recited only in brief

Seizures taken or returned ſhall be delivered to the Ingroſſer before the next Term.

Fees to the Remembrancers.

And for the future eaſe of Sheriffs in the paſſing their Accompts in the Exchequer, It is by the ſame Stat. Enacted & declared, that every ſeizure for or concerning any lands, tenements, & hereditaments then remaining charged in the Foreign Accompt of any Sheriff in England, for the year 1660. ſhall be from the ſaid Foreign Accompt charged particularly in the great Roll of the Exchequer; and that the reſpective Remembrancers of the ſaid Court do forthwith, and ſo, from time to time for the future, make perfect Copies of every ſuch other ſeizure and Inquiſition as then were or there after ſhould be certified into their reſpective Offices, without certifying the Copy of the Writ or Commiſſion at large, upon which ſuch ſeizure and Inquiſition is or ſhall be taken or returned, mentioning only in brief, the date of the ſaid Writ or Commiſſion, and ſhall deliver the ſaid Copies truly examined and attefted under their hands to the Ingroſſer of the ſaid great Roll, and that all ſuch ſeizures as ſhall be returned or certified into any their reſpective Offices ſhall be delivered, ſo examined and attefted, to the Ingroſſer before the firſt day of the next Term, after the Remembrancers receiving of the ſame, ſo as the ſame may be charged in the great Roll; to the end that Procels of the Court may thence iſſue for levying the Iſſues and Profits, for the uſe of the Crown; The Remembrancer ſhall be paid for every Sheet, writ and delivered, 8 d. to be paid by the Sheriff who ſhall be allowed the ſame upon his Accompt out of the profits ariſing by ſuch ſeizures; and no Sheriff in England ſhall be charged in Accompt to anſwer any illeviable ſeizure, farm, rent or debt, or other ſeizure, farm, rent, debt, matter or thing which was not writ in Procels to be levied: wherein the perſons of whom, or the Lands or Tenements, out of which together with the cauſe for which the ſame ſhall be ſo levied, ſhall be plainly and particularly expreſſed; But ſhall be thereof wholy diſcharged without Petition, Plea, or other trouble or charge whatſoever.

Sheriffs ſhall not anſwer illeviable Seizures Farm, Rents, &c. nor others which are not in Proceſs and plainly expreſt.

Seizures before the firſt of K. James and divers others to be left out of the Sheriff's Accompts.

And that all Seizures made before the firſt year of the late King James, remaining in the Accompts of the Sheriffs, and all ſeizures and debts which are pardoned, are fully diſcharged, and ſhall be left out of the Sheriffs Accompt without further Order, Plea, Petition or other charge, and that no Procels ſhall iſſue for levying the ſame, or for any other rent, or farm which cannot be explained by ſetting forth the particulars thereof, or which have been unanſwered forty years: And that all other dead Farms and Seizures, and all deſperate illevyable and unintelligible debts ſhall be removed out of the Annual Roll, and Sheriffs

riffs charge into the Erannuall Roll, there to remain till by Commiſſion, they ſhall be revived and made anſwerable.

Proceſs for Debts to be ſent forth in convenient time.

And to the end that all new debts ariſing and coming into the Exchequer for the future may be ſent forth in Proceſs in convenient time. It is thereby further Enacted and declared that the ſaid ſeveral Remembrancers do forthwith inroll and certifie to the ſaid Ingroſſer of the great Roll, all ſuch debts as any Sheriff or Sheriffs of this Realm are or hereafter ſhall be charged withall, either by virtue of their reſpective returns made to the Barons of the ſaid Exchequer upon his Majeſties Writs of fieri facias, Levari facias, Capias, or other Proceſs: And alſo of all fines and amerciaments, which are and ſhall be ſet and impoſed by the Court of Exchequer, upon any Sheriff or Sheriffs for his or their contempts or neglects (that is to ſay) that all and every ſuch debts, fines, and amerciaments, as then were returned, ſet or impoſed in any of the ſaid Offices ſhould be delivered as aforeſaid, before the firſt day of February then next, and all afterwards by the firſt day of the next Term after ſuch returnes made or ſuch fines or amerciaments ſet or impoſed, that ſo they may be charged in the reſpective Sheriffs Accompts, and comprehended within their reſpective Quietus eſt, upon pain that every Officer or Officers in the ſaid Exchequer, who ſhall in any thing offend contrary to the ſaid Statute ſhall forfeit 40 l. for every ſuch offence, one moiety to the King, & the other moiety to the party agrieved to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majeſties Courts at Weſtminſter, wherein no Eſſoin, Protection, Priviledge, or wager of Law ſhall be allowed;

Penalty upon Officers for doing any thing againſt this Act.

9 E. 2. St. Lincoln. 4 E. 3. cap. 9. 5 E. 3. cap. 4.

Sheriffs ſhall have ſufficient Lands within the County.

And it is thereby further Ordained that no perſon ſhall be aſſigned Sheriff of any County within this Realm, but ſuch as have Lands within the ſame County ſufficient to anſwer the King and his People.

21 Jac. cap. 5.

A Quietus eſt, to be a ſufficient diſcharge for a Sheriff, if not queſtioned within four years after grant thereof.

And whereas by an Act made in the 21 of King James, It was provided, That whenſoever any Sheriff upon paſſing his Accompts ſhould have his Quietus eſt, that he ſhould be thereby abſolutely diſcharged of all ſums of money by him levyed and received, and pretended not to be accompted for within the ſaid Accompt, whereupon he had his Quietus eſt, unleſs ſuch Sheriff ſhould be called in queſtion for ſuch ſums of money ſo pretended to be levyed and not accompted for within four years after the time of ſuch Accompt and Quietus eſt, Notwithſtanding which Act, divers Sheriffs and their Heirs upon ſuch pretence have been moleſted and troubled many years after their Accompts and Quietus eſt, and have had Proceſs ſent out againſt them contrary to the ſaid Statute, It is therefore thereby further Enacted, That when any Sheriff or Sheriffs within England or Wales upon paſſing their Accompts, ſhall have their Quietus eſt, that then ſuch Sheriff and Sheriffs, their Heirs, Executors, and Adminiſtrators, Lands, Tenements, Goods and Chattells ſhall be thereby abſolutely diſcharged of all manner of ſums of money by them levyed and received notwithſtanding any ſuch pretence, that the ſame were not accompted for, or other pretence whatſoever, unleſs ſuch Sheriff be called in queſtion, and Judgement given againſt him or them for the ſame within four years after ſuch Accompt or Quietus eſt; And every Officer or Miniſter by whom or by whole default any Proceſs ſhall be ſent out contrary to that Stat. ſhall incur the like forfeitures and penalties to be recovered, by ſuch perſon and in ſuch manner, as by the ſaid former Stat. is provided.

21 Jac. cap. 5.

Penalty as in the ſaid Act.

Cheſter, Lancaſter, Durham, Wales.

The Sheriffs of Cheſter, Lancaſter, Durham, and the Counties in Wales being County Palatines, ſhall notwithſtanding this Act, as to the manner of their Accompting, Accompt, as formerly before the reſpective Auditors only, and not elſewhere.

Proviſoe touching the Kings Remembrancer and Lord Treaſurers Remembrancer.

By proviſoe in the ſaid Act it is declared, that nothing in the ſaid Act contained ſhall extend to enjoyn his Majeſties Remembrancer, or the Lord Treaſurers Remembrancer, to tranſcribe and deliver to the Ingroſſer of the great Roll any Inquiſitions or Seiſures, but ſuch as have been formerly charged in the Foreign Accompts of the Sheriffs, but for all Inquiſitions upon Attainders, or other forfeitures to the Crown, the ſame ſhall be put in charge as heretofore, according to the conſtant uſage and decree of the Court of Exchequer. Nor ſhall the ſaid Act extend to exclude his Majeſties ſaid Remembrancer or or from the writing forth Proces for or upon any his Majeſties Debts, Duties, Outlawries, or other charge whatſoever, or Proces of Levari facias, at the proſecution of any perſon or perſons, to levy the iſſues or profits of any Lands or Tenements ſeized or to be ſeized into the Kings hands, or Proces of venditioni exponas for Goods ſeized or to be ſeized upon any Debt to his Majeſtie, his heirs or ſucceſſors, or upon any Outlawry; Or to alter or charge the pleadings or other proceedings heretofore uſed in the ſaid Office, upon any pleadings touching the ſaid Debts, Duties and Seiſures, or any of them. And that no Debt, Duty, Fine, Amerciament or Seiſure whatſoever, which ſhall be charged in the ſaid great Roll of the Pipe upon any perſon by any Record, Proces or proceeding had, made, filed or recorded in his Majeſties ſaid Remembrancers Office, nor any Proces or proceeding thereupon to be had, or made by virtue of the ſaid Act, ſhall be relpited, ſtaid, mitigated, extenuated, compounded, or otherwiſe diſcharged, but by Order, Warrant or Judgement made, filed or entred in his Majeſties ſaid Remembrancers Office, where the Original of ſuch Debt, Duty or Charge remaineth; And that in caſe any Proces of ſummons of the Pipe ſhall be awarded, for or upon any ſuch Debt, Duty, Fine, Amerciament or Seiſure whatſoever, and the ſame ſhall not upon ſuch ſummons be levied or anſwered unto his Majeſtie, That then the Clerk of the Pipe, or Ingroſſer of the great Roll, ſhall the next Term after the return of ſuch ſummons certifie the ſame in a Schedule into his Majeſties ſaid Remembrancers Office, that further Proces may thence be iſſued for levying thereof. Nor ſhall the ſaid Act extend or be conſtrued prejudicial to his Majeſties Remembrancer in any juſt, antient and lawfull Fee belonging to his Office, and uſually had by him or his predeceſſors.

Continuance

This Act to continue to the end of the firſt Seſſion of the next Parliament, and no longer.

SECT.

SECT. 3.

Of Arreſts.

13 Car. 2. By the Statute of 13 Car. 2. touching Arreſts, it is enacted, that after the 12th. of Febr. 1661. no perſon arreſted by any Sheriff, Under-ſheriff, Coroner, Steward, or Bayliff of any Franchiſe or Liberty, or by any other perſon having or pretending to have any authority or warrant, by force or colour of any Writ, Bill, or Proceſs out of the Kings Bench or Common Pleas, wherein the certain or true cauſe of action is not expreſſed particularly, and for which the Defendant is bailable by the Stat. 23 H. 6. ſhall be forced to give bond with 23 H. 6. ſureties for his appearance at the return of the Writ, Bill or Proceſs, exceeding the ſum of 40 l. to be conditioned for ſuch appearance: And all Sheriffs and other Officers ſhall let to bail, and deliver out of priſon and from their cuſtody all perſons by them arreſted upon any ſuch Writ, Bill, or Proceſs, wherein the true cauſe of action is not particularly expreſſed, upon ſecurity in the ſum of 40 l. and no more, given for the appearance of ſuch perſon ſo arreſted to the Sheriff or other 23 H. 6. Officer, according to the ſaid Stat. of 23 H. 6.

Perſons arreſted by proceſs out of the Kings Bench or Com. Pleas, not expreſſing the cauſe of action, to be bailed.

Upon ſecurity in 40 l.

And that upon appearance to be entred in the Term wherein ſuch Writ, Bill or Proceſs is returnable, for the Defendant by Attorney in the Court whence the ſaid Writ, Bill or Proceſs iſſued, unto ſuch Writ, Bill or Proceſs, the Bond aforeſaid is declared to be ſatisfied and diſcharged; And after ſuch appearance no Amerciaments be eſtreated upon or againſt any Sheriff or other perſon, concerning the want of ſuch appearance.

An appearance ſhall diſcharge that Bond.

This Act not to extend unto any arreſts to be made by vertue of any Cap. Utlagatum, Attachment upon Reſcous, or Attachment upon any contempt iſſuing out of either of the ſaid Courts, though no particular certainty of the cauſe of action be expreſſed in the ſaid Writs; And that no Sheriff, Under-ſheriff, or other Officer, ſhall diſcharge any perſon taken upon any Writ of Cap. Utlagatum, without a lawfull Superſedeas firſt had; And that upon the ſaid Writs of Attachment ſuch lawfull courſe be taken for ſecurity for appearance therein, as hath been heretofore uſed.

Arreſts upon Cap. Utlagatum, *Attachments upon Reſcous or Contempts excepted.*

Nor ſhall it extend to any Writ of Cap. ad ſatisfaciend. wherein a Writ of Exigent after a Judgement is to be awarded; Nor to a Capias ad ſatisfaciend. againſt the Defendant in order to make any bailable, but that the ſame continue and be, as before the making of the ſaid Stat.

Arreſts upon Cap. ad ſatisfaciend. *to the Exigent, or againſt a Defendant, excepted.*

SECT.

SECT. 4.

Habeas Corpus.

Every perſon committed contrary to this Stat. ſhall have a Hab. Corp.

Directed generally.

Sheriff ſhall take the parties own Bond for the charges, and the Court ſhall order thoſe charges if, &c.

By the Stat. of 17 Car. 1. cap. 10. intituled, An Act for regulating the Priv-Council, and taking away the Star Chamber; it is amongſt other things enacted, That every perſon that ſhall be committed, reſtrained of his liberty, or ſuffer impriſonment by the order or decree of the Star-Chamber, or of any other ſuch Court, or by command or warrant from his Majeſtie, his heirs or ſucceſſors, or by command of the Councill-Board, or of any the Lords or others of his Majeſties Councill, upon demand or motion by Counſell or others to the Judges of the Kings Bench or Common Pleas in open Court, have forthwith for the ordinary fees a Writ of Habeas Corpus, to be directed generally to all and every Sheriff, Gaoler, Miniſter, Officer, or other perſon in whoſe cuſtody the party reſtrained ſhall be; who upon the Return of the ſaid Writ, and according to the command thereof, upon due and convenient notice thereof given him at the charge of the party who requireth or procureth ſuch Writ, and upon ſecurity by his own Bond, given to pay the charge of carrying back the Priſoner, if he ſhall be remanded by the Court to which he ſhall be brought, (the charges of bringing and carrying back the Priſoner to be alwayes ordered by the Court, if any difference ſhall ariſe thereabouts) bring or cauſe to be brought the body of the party ſo committed or reſtrained, before the Judges or Juſtices of the ſaid Court from whence the Writ iſſued, and then certifie the true cauſe of ſuch his detainer or impriſonment. 17 Car. 2.

SECT. 5.

Jurors.

No Petty-Jury in actions or ſuits concerning Cuſtoms.

The Sheriffs of London *upon warrant from the Commiſſioners for High-ways & ſtreets requiring them to impanel and return Juries, ſhall ſo do.*

By the Stat. 14 Car. 2. concerning Tonage and Poundage, it is enacted, That upon any Action, Suit or Information, upon any Law or Statute concerning Tonage and Poundage, or Ships or Goods to be forfeited by reaſon of any unlawfull Importation or Exportation, there ſhall not be any Petty-Jury, but ſuch only as are the Kings natural born Subjects. 14 Car. 2. 11.

By the Stat. of 13 Car. 2. for repairing the High-wayes, and Sewers, and keeping clean the ſtreets in and about London and Weſtminſter, the Sheriffs of London for the time being, upon warrant from the ſaid Commiſſioners requiring them to impanel and return a Jury before them, or any five of them, are required to do the ſame accordingly. 13 Car. 2.

By

19 Car. 2. 22 Car. 2. By the Stat. of 19 Car. 2. for rebuilding the City of London, the Sheriffs of London for the time being, upon warrant from the Lord Major and Court of Aldermen, requiring them to impanell and return before them a Jury of good and lawfull men of the ſaid City, are required to do the ſame accordingly.

The Sheriffs of London, upon Warrant from the Lord Major and Court of Aldermen, requiring them to Impanell and return Juries, ſhall ſo do.

22 Car. 2. The like is required by Act of the 22 Car. 2. Intituled an Additionall Act for rebuilding the City of London.

19 Car. 2. By the Stat. of 19 Car. 2. conſtituting Commiſſioners for taking Accompts, It is enacted, That the Commiſſioners or any five or more of them, by Warrant under their hands and Seals to any Sheriff, Bayliff or other Officer, within any County, City, Port, Corporation, or Liberty within this Realm, requiring them to return and cauſe to appear before them, or ſome of them, or ſuch others as they ſhall appoint, good and lawfull men, inhabiting within their reſpective Counties, Cities, Ports, Corporations, and Liberties at ſuch time and place as ſhall be thereby required, under ſuch penalty as therein ſhall be contained, ſhall return them and cauſe them to appear accordingly. This to continue three years from the end of that Seſſion of Parliament.

The Like Jurors to be returned before Commiſſioners for taking Accompts.

SECT. 6.

Poor Priſoners.

19 Car. 2. By the Stat. of 19 Car. 2. 4. touching poor Priſoners, It is amongſt other things Enacted, That any Sheriff or other reſpective Counties having the Cuſtody of the Gaol, with the conſent of three or more Juſtices of the Peace, whereof one of the Quorum may upon emergent occaſions in their reſpective Counties, provide other ſafe places for the removall of the Sick, out of the ordinary and uſuall Gaol the ſame places to be uſed for the Cuſtody of the Priſoners, who according to their order ſhall be there kept, ordered, diſpoſed and conveyed to the Gaol-delivery in ſuch like manner as Priſoners ought to be kept, ordered, diſpoſed, and conveyed in and from the Common-Gaols by the Laws and Statutes of the Land (provided no ſuch place be made uſe of, for the purpoſes aforeſaid againſt the good and free will of the owners thereof.)

If Sickneſſes and Diſeaſes happen among Priſoners, proviſion is made for their removall.

The like power for the removal of Priſoners in time of Infection, is given to the Major, Bayliff, and other head Officer, or other perſons, who have Cuſtody of the Common-Gaol, within any Corporation of this Kingdome and Dominion of Wales.

Removing of Priſoners in Corporations.

SECT.

SECT. 7.

Pardon.

Penalty of any Officer, &c. that ſhall go about to diſquiet or trouble any perſon pardoned by this Act.

By the Stat. of free and general Pardon made in the 12th. year of his now Majeſties reign, it is amongſt other things enacted, That if any Sheriff or Eſcheator, or any of their Deputy or Deputies, or any Bailiff or other Officer whatſoever, by colour of his Office or otherwiſe, do levy, receive, take, or withhold of or from any perſon, any thing thereby pardoned or diſcharged, and be thereof convicted or condemned by ſufficient proof, ſhall pay for recompence thereof to the party grieved treble damages, beſides all coſts of the ſuit; And ſhall forfeit to the King ten pounds. 12 Car. 2.

Fines, Iſſues & Amerciaments received by Sheriffs excepted.

Except all Iſſues, Fines and Amerciaments, Rents, and other publick Duties, being levied, received, or collected by any Sheriff, Under-ſheriff, Bailiff, Miniſter, or other Officer, to or for the uſe of the late King, the Parliament, or the Keepers of the Liberty of England, or any other perſon aſſuming himſelf Protector, or for his Majeſty that now is, and not accompted for and diſcharged.

SECT. 8.

Replevin.

Plaintiff in Replevin being Non-ſuit before Iſſue joyned in any the Courts at Weſtm. how the Defendant may Avow.

The Sheriff ſhall enquire of the value of the Diſtreſs.

By the Stat. of 17 Car. 2. touching Replevins, it is enacted, That whenſoever any Plaintiff in Replevin ſhall be Non-ſuit, before Iſſue joyned in any ſuit of Replevin by Plaint or Writ lawfully returned, removed or depending in any the Courts at Weſtminſter, That the Defendant making a ſuggeſtion in the nature of an Avowry or Cognizance of ſuch Rent, to aſcertain the Court of the cauſe of Diſtreſs, the Court upon his prayer ſhall award a Writ to the Sheriff of the County where the Diſtreſs was taken, to enquire by the Oath of twelve good and lawfull men of his Balywick, touching the ſum in arrear at the time of ſuch Diſtreſs taken, and the value of the Goods or Cattel diſtrained; And thereupon notice of fifteen dayes ſhall be given to the Plaintiff or his Attorney in Court, of the ſitting of ſuch enquiry; And the Sheriff ſhall enquire of the truth of the matters conteined in that Writ, by the Oaths of twelve good and lawfull men of his County; And upon the return of ſuch Inquiſition, the Defendant ſhall have Judgement to recover againſt the Plaintiff the Arrearages of ſuch rent, in caſe the Goods or Cattel diſtrained amount unto that value; And in caſe they ſhall not amount to that value, then ſo much as the ſaid Goods and Cattel ſo diſtrained ſhall in value amount unto, together with his full coſts of ſuit; And ſhall have 17 Car. 2. 7. 19 Car. 2. 5.

Execution

Execution thereupon by Fi. fa. or Elegit, or otherwise, as the Law shall require. And in case such Plaintiff shall be Non-suit after Cognisance or Avowry made, and Issue joyned, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impanelled or returned to enquire of such Issue, shall at the prayer of the Defendant enquire concerning the sum of the Arrears, and the value of the Goods or Cattel distrained; And thereupon the Avowant, or he that makes Cognisance, shall have Judgement for such Arrearages, or so much thereof as the Goods or Cattel distrained amount unto, together with his full costs; And shall have Execution for the same by Fi. fa. or Elegit, or otherwise, as the Law shall require.

If the Plaintiff be Non-suit after Issue joyned, may enquire concerning the sum of the arrears, and the value of the Distress.

And if Judgement in any the Courts at Westminster be given upon Demurrer for the Avowant, or him that maketh Cognisance, for any rent, the Court shall at the prayer of the Defendant, award a Writ to enquire of the value of such Distress; And upon the return thereof, Judgement shall be given for the Avowant, or him that makes Cognisance, as aforesaid, for the Arrears alledged to be behind in such Avowry or Cognisance, if the Goods or Cattel so distrained shall amount to that value; And in case they shall not amount to that value, then for so much as the said Goods and Cattel so distrained amount unto, together with his full costs of suit, and shall have like Execution, as aforesaid.

If Judgement upon a Demurrer, the Court shall award an enquiry of the value of the Distress.

If the Distress shall not be found to be to the full value of the Arrears, the party, his Executors or Administrators may distrain for the residue.

If the Distress do not amount to the full value of the Arrears, the party may distrain for the residue.

This Act made to extend to Wales, and Counties Palatine, 19 Car. 2. 5.

Wales.

19 Car. 2. 5.

CAP. II.

Sheriff.

SECT. 1.

Some obſervations on the Sheriffs Oath.

SIR Edward Coke late Lord Chief Juſtice of the Kings Bench, and removed from his places, being made Sheriff of the County of Buckingham, had a dedimus poteſtatem to take his Oath, annexed to a Schedule; To which he took exceptions: For that there were more Additions to the ſaid Oath, than was in the antient Oath ſet down in the Regiſter, and afterwards confirmed and appointed by the Statute of 18 Ed. 3. He therefore conceived there ought not to be ſuch Additions, unleſs by like authority of Parliament. The Additions were; First, That he ſhould ſeek to ſuppreſs all Errors and Hereſies, commonly called Lolardiſm, and ſhould be aſſiſtant to the Commiſſaries and Ordinary in Church-matters; which part of the Oath was added by reaſon of the Statutes of 5 R. 2. and 2 H. 4. cap. 15. whereby it is appointed, that the ſame ſhould be taken by the Sheriff, eſpecially for thoſe two cauſes: But he thereto certified, That thoſe Statutes are repealed by the Statutes of primo Edwardi ſexti, and primo Eliz. and therefore ought not to be taken. The ſecond Addition was, That he ſhould return reaſonable Iſſue; whereto he excepted, becauſe it is appointed by the Statute, and penalties impoſed for not performing it, therefore it ought not to be upon Oath. The third Addition was, That he ſhould return all Juries, of the neareſt and ſufficienteſt perſons; whereto he excepted, becauſe that part of the Oath is not appointed by any Statute, and it is againſt common practice, that he himſelf ſhould return Juries, it being commonly done by the Under-Sheriff, who is alſo appointed by the Statute to be ſworn. The fourth Addition was, That he ſhould cauſe the Statute of *Winton*, and the Statutes againſt Rogues and Vagabonds, to be put in execution;

Cr. Car. fo. 25. Sir Edward Cokes caſe.

1 Exception.

18 E. 3.

The new Additions which were objected againſt.

5 R. 2. 2 H. 4. cap. 15.

1 E. 6. 1 Eliz.

The ſecond Exception.

The third Exception.

The fourth Exception.

tion; whereto he excepted, becauſe the Statute of Winton. is altered, and the Statutes againſt Rogues and Vagabonds are appointed to be executed by the Juſtices of the Peace, and not by the Sheriff. Upon theſe Exceptions the Lord Keeper aſſembled all the Juſtices, to conferr with them about the ſame; and as touching the firſt point, they conceived it was fit to be omitted out of the Oath, becauſe it is appointed by Statutes which are repealed, and were intended againſt the Religion now profeſſed and eſtabliſhed, which before was condemned for Hereſie, and is now held for the true Religion. For the ſecond Addition, they conceived it convenient, and for the ſervice of the King and Subjects; and the greater part of them were of opinion, That an Oath in this and the other points, may be well enjoyned by the King, and order of State, without Parliament; and it may be well impoſed upon the Sheriff to take, being for publique benefit, and execution of the Laws. For the third Addition, it is not ſo ſtrictly to be intended, that he himſelf ſhould return Juries, but it ought to be intended according to the conſtruction of Law, That he himſelf, by himſelf or Under-Sheriff, ſhould return the Juries, which is a ſufficient performance; for the Law ſaith, Qui per alium facit per ſeipſum facit. For the fourth Addition, it reſts upon the former reaſons, That this Oath being appointed and continued divers years, by direction of the State, although without the expreſs Authority of any Statute-Law, yet may be well continued for the publique benefit, in repreſſing ſuch perſons; And although Authority be given to Juſtices of the Peace, to put thoſe Statutes in execution, yet it doth not take away the Sheriffs Right, who is the Publique Conſervator. And ſo they delivered their opinions to the Lord Keeper at his houſe at Reading.

Where the Oath ought to be amended.

The anſwer to the ſecond Exception.

To the third Exception.

To the fourth Exception.

Enquiry in Dower.

Hill. 35 Eliz. B. R. Randalls caſe, Noy 21.

A. Brought Dower againſt the ſon, to be endowed of Lands of which her Husband (Father of the Defendant) died ſeiſed: a Writ iſſued out to the Sheriff, to enquire of the damages; and he made his warrant to I. S. to take the enqueſt: It was the opinion of the Juſtices in this caſe, that he cannot in this caſe make a Deputy, becauſe it is a judicial act, which the Sheriff ought to do in perſon. Hill. 35 Eliz. B. R. Randalls caſe, Noy 21.

Cannot make a Deputy to enquire in Dower.

Enquiry de dampnis.

To make Inquiſition is a judicial act, which cannot be made by his Bailiff.

Where a Writ may be directed to the Sheriff, though he be a party therein.

Error aſſigned. That although the Sheriff was party, yet the Writ of Covenant ſhould have been directed to him, and not to the Coroner.

ERror, to reverſe a Fine in Cheſter: The error aſſigned was, becauſe the Writ of Covenant was directed to the Coroners, with this clauſe in the end of the Writ: Quia prædictus *Joh. Dove* Miles, eſt Vicecomes Comitatus *Ceſtriæ*, fiat executio brevis prædict. per Coronator. Ita quod Vicecomes non ſe intromittat; whereas the Writ ought to have been directed to the Sheriff, &c. And this was divers times argued, and much inſiſted upon by thoſe who argued at the Bar for the Plaintiff, in the Writ of Error: And firſt they ſaid, that if the Sheriff had been the ſole party to the Fine, yet the Writ ought to have been directed unto him, becauſe it is but a Summons, and the Sheriff may ſummon himſelf: Alſo it is not returned, that he is Sheriff and cannot ſummon himſelf; and the courſe of Law is, that the Writ ſhall be directed to the Sheriff, and not unto any other, when it may be done without prejudice: And that the Writ is abated when it is directed to the Coroners, &c. vide 18 H. 8. 3. 9 H. 6. 12. The ſecond reaſon, becauſe that the Sheriff is not the ſole party, but others are joyned with him, &c. But all the Court reſolved, that it was not Error, for if the Writ be directed to the Sheriff, and he is party, it is doubted in the Books, if the Sheriff as Plaintiff may execute a Writ for himſelf; And therefore it were good to avoid the doubt, to take a Writ directed to the Coroners, as well where the Sheriff is Plaintiff as Defendant, upon ſurmiſe thereof in Chancery at the time of ſuing the Writ: And it is the general courſe, to award the Writ to the Coroners, to avoid the doubt of delay; for if he be Plaintiff, and makes not ſuch ſurmiſe, the Defendant peradventure will take exceptions, in abatement of the Writ; and ſo if he be Defendant, he may peradventure plead in abatement of the Writ, and cauſe him to have a new Writ: But when it is awarded to the Coroners, if the Defendant would have excepted againſt it, as peradventure he might in ſome caſes, yet when he appears and accepts thereof, and comes and levies a Fine thereupon, he never afterwards ſhall aſſign for Error, that the Writ ought not to have been directed to the Coroners, eſpecially upon this amicable Writ, to make aſſurance, &c. Wherefore all the Court agreed, that he never ſhould aſſign it for Error, &c. and the Fine was affirmed.

Dove verſ. Smithier, Cr. Car. 415, 416.

Summons.

To whom Writs are to be directed.

To other parties beſides the Sheriff.

18 H. 8. 3. 9 H. 6. 12.

The Sheriff may execute a Writ for himſelf.

Advice by the Court to avoid pleading in Abatement.

Eſtoppel.

In a Præc. quod reddat, it is a good Return that one of the Defendants is Sheriff, &c.

A Præcipe quod reddat was awarded, Vicecomitibus Glouc. againſt A. B. and C. the Sheriffs returned, that the ſaid C. named in the Writ, was one of the Sheriffs of the ſaid City; Ideo ego præfat. C. & D. alter Vicecom. Civitatis prædict. meipſum ſecundum exigentiam iſtius brevis ſummonire non poſſum: It was adjudged by the whole Court to be a good return. 7 Eliz. C. B. Bendlows 39, 40.

7 Eliz. Bendlows, fo. 39, 40.

SECT.

SECT. 2.

Where Covenants between Sheriff and Under-Sheriff, ſhall bind, and where not.

Paſ. 11 Jac. Rot. 346. Norton againſt Simmes, Hobart fo. 12, 13, 14.

Debt upon Bond for performance of Covenants.

SIR Daniel Norton Knight, late Sheriff of Hampſhire, brought an Action upon an Obligation of one hundred pounds, againſt Richard Simmes, for performance of Covenants, whereof the effect was; That whereas Sir Daniel Norton had made Bryan Chamberlain his Under-Sheriff at his will, the ſame Chamberlain by Indenture did Covenant with the Sheriff, to diſcharge and ſave him harmleſs of all eſcapes of Priſoners, that ſhould be arreſted by him, or any Bayliff or Officers appointed by him; and another Covenant was, That he would not execute any Extent, Liberate, Elegit, or any other Execution, for any ſum, above the ſum of twenty pounds, before he had firſt made known to the ſaid Sheriff, the nature and quality of the ſaid Writ; and if any ſuch Execution were above twenty pounds, then he ſhould not execute it without the ſpecial warrant of the ſaid Sir Daniel Norton, the High-Sheriff: And there were alſo divers other Covenants; and the Defendant pleaded, that Chamberlain the Under-Sheriff had performed all the Covenants; whereupon the Plaintiff replyed, that one White, Anno 44 Eliz. had recovered in the Common Pleas 203 pounds debt, againſt one Feilder, and that he had gotten 52 pounds thereof, by an Execution of Fieri facias, in the ſaid County of Southampton, and dyed, and that Frances White his Executrix, had ſued a Scire facias againſt the ſaid Feilder, for the reſidue, ſcilicet 151 pounds, and had Judgement, and took out a Capias ad ſatisfaciendum, and delivered it to the ſaid Chamberlain, who arreſted him by force thereof; and ſo he was in Execution, in the cuſtody of the ſaid Sheriff, for the ſaid Debt, and afterwards eſcaped out of the cuſtody of the ſaid Sheriff. Hereupon the Defendant demurred; and the whole Court upon publick argument, gave Judgement for the Plaintiff; and in this caſe theſe points were reſolved.

In an Indenture between the High-Sheriff and his Under-Sheriff.

A Covenant that he ſhould not execute Executions above 20 l.

Performance pleaded.

A breach aſſigned.

23 H. 6.

The reſolution of the Court.

First, That this caſe was not within the Stat. of 23 H. 6. both becauſe it was not a Bond made by, or in the behalf of a Priſoner, as Beaufages caſe is, as alſo becauſe the Statute is not pleaded, being a ſpecial Law; and alſo becauſe it was not directly pleaded, that Norton was High-Sheriff, or Chamberlain Under-Sheriff, but only by way of recital in the Indenture which was pleaded.

How the Under-Sheriffwick may be granted.

what an Under-Sheriff is.

He cannot be irrevocable.

It was alſo reſolved, that the Sheriff might grant his Under-Sheriffwick, to hold at his will only; for it was in his choice, to make or not to make an Under-Sheriff, or to exerciſe it himſelf; That an Under-Sheriff is in effect but the Sheriffs Deputy, and therefore according to the nature of a Deputation, he muſt be removable as an Attorney is; ſo that if the Sheriff ſhould make him irrevocable, yet he may revoke him, there is neither Common Law nor Statute Law that makes him immovable, he is but in the nature of a general Bayliff-errant to the Sheriff, and the whole Shire, as others are over the Hundred;

Wyat Weiles caſe, in Coo. Rep. accord.

His Oath.

Hundred; his Oath appointed by the Statute of 27 Eliz. is, That he should bear himself well for so long as he shall continue in the Office: It is necessary both for the publick service, and for the indempnity of the High-Sheriff, that he be removable by the High-Sheriff. 27 Eliz.

Yet it is true, that Under-Sheriffs have been long in use, and experience proves, that many Sheriffs cannot well execute it themselves; so this point was resolved, that he was a perfect Under-Sheriff, and so the arrest well made by him, and so an escape upon it.

He may make an arrest.

Where the power of the Under-Sheriff cannot be abridged.

Next it was resolved, that a Sheriff in making an Under-Sheriff, did implicitly give him power to execute all the ordinary Offices of the Sheriff himself, that might be transferred by the Law, as serving of Process, and Executions, and the like; but he could not deal in a Writ of Redisseisin, because in that the Sheriff is a Judge, nor in that case of the Writ of Waste, where the Sheriff is commanded to go to the place wasted, because it is personal unto the Sheriff himself; hereof it follows, that if a Sheriff will make an Under-Sheriff, provided that he shall not serve Executions above twenty pounds, without his special warrant, this proviso will be void; For though he may chuse not to make an Under-Sheriff at all, or may make him at his will, and so remove him wholly, yet he cannot leave him an Under-Sheriff, and yet abridge his power, no more than the King may in case of the Sheriff himself: But it was said, that the case there was not so; That the restraint of Executions above twenty pounds, grew not on the part of the Sheriff, but on the part of the Under-Sheriff, by his Covenant, which might stand for good notwithstanding the repugnancy to his Office: But notwithstanding that objection, the Covenant was holden void, as being against Law and Justice; for since by being made Under-Sheriff, he is liable by Law to execute all Process, without anothers special warrant, for that is to deny or delay Justice, so this being a Covenant against Law, and being in the negative, needed no answer at all, as being void, and no Covenant in Law: And though it were not void, yet the general Plea of performance of all Covenants, will serve in the case of a negative Covenant. Tamen quære de eo.

Not to serve Executions above 20 l. is a void Proviso.

Negative Covenant against Law, needeth not to be answered.

Where one Covenant is void in Law, the Bond for performance thereof may be good, as to other Covenants.

The Sheriff takes a Bond contrary to the Stat. and for a just Debt, it is void for both.

But it was resolved, though this Covenant were void in Law, yet the Bond was good for the rest of the Covenants agreeable to Law; And a difference was taken between a Bond made void by Statute, and by Common Law; for upon the Statute of 23 H. 6. if a Sheriff will take a Bond, for a point against that Law, and alls for a due debt, the whole Bond is void, for the letter of the Statute is so, and the Statute is a strict Law; but the Common Law doth divide according to common reason, and having made that void that is against Law, letteth the rest stand, as the 14 H. 8. fo. 15. is.

Hereof it followeth, that if the Covenant for discharge of escapes (ut supra) were good in Law, and broken, that then the Plaintiff ought to have Judgement; and it was agreed, that if a man will take a Bond to be saved harmless of suffering one to have escaped, or for enlarging of him out of prison, against the Law, that these Bonds are void: And so are the cases of Dive and Manning in Plo. and the case of

of Thower and Whetſtone, Mich. 2 & 3 Phil. & Mar. Dyer 118. and ſo is the caſe of 2 H. 4. fo. 9. for the Withernam.

But this caſe is clean otherwiſe, and was reſolved by the whole Court, to be lawfull for the Sheriff to take Bond of his Under-Sheriff, to diſcharge and ſave him harmleſs of eſcapes upon arreſts made by himſelf; for ſince he transferrs his Authority unto him, it is reaſon to take ſecurity of him, to perform all things juſtly and faithfully to himſelf and others; and there is nothing done or intended againſt Law, for there is no lawfull permiſſion of any to eſcape already done, or to be done; As in the other caſe, where the fault is committed by the party, that takes the Bond upon confidence of that ſecurity; But here the beſt performance of the Covenant is, that no eſcape be ſuffered; And the next, that if any be ſuffered, that then he ſatisfie the party ſo, that the Sheriff may be at no loſs. It was alſo reſolved, that the Sheriff in this caſe, was not bound either to give notice to the Under-Sheriff of the eſcape, or to make any requeſt for diſcharge, for the Covenant hath no ſuch thing, but binds him to diſcharge at his peril; And Hobart Chief Juſtice was of opinion, that if the Covenant had not been againſt Law, for the Executions above twenty pounds, and that the Bar had been inſufficient, becauſe it did not plead ſpecially to that negative Covenant, that yet if the replication were naught, and aſſigned no ſufficient breach, the Plaintiff could not have had Judgement; for though the action were well brought upon the Obligation alone, yet when it appeareth that the condition was for performance of Covenants, now there can be no cauſe of action without ſome Covenant broken: And obſerve well Tilly and Woodlyes caſe, 7 E. 4. for this purpoſe, that if it doth appear to the Court, that the Plaintiff hath no cauſe of action, he ſhall never have Judgement, though he had a verdict for him, againſt one of the Defendants.

A Bond to ſave the Sheriff harmleſs from eſcapes, is good.

Where the under-Sheriff covenants to ſave harmleſs from eſcapes, there he muſt take notice of all eſcapes at his peril.

If the bar is inſufficient, and the Repl. were naught, yet (as this caſe was) although the Declaration was good, the Plaintiff ſhall never recover.

SECT. 3.

Where the New Sheriff ſhall be chargeable, and where the Old Sheriff only; and where their Executors; and how their Priſoners are to be delivered over, and what Returns, &c. by them good, and how to be made.

The New Sheriff is no chargeable with ſuch things which are executed before that they are delivered over to him by the Old Sheriff.

Weſtby verſ. Skinner & Catche, Cr. El. 365. Rolls 2. part. 457. Chandler verſ. Thomſon, Hob. 266. Egerton verſ. Morgan & al. Bulſtrode 1 pt. 70 uſque 79. Smalman verſ. Lane, Leon. 3 part. 54.

For if the Sheriff takes a man in Execution, and afterwards a New Sheriff is made, and afterwards, and before the antient Sheriff delivers this Priſoner over by Indenture to the New Sheriff, the Priſoner eſcapes, here the Old Sheriff only is chargeable for this eſcape, and not the New Sheriff; for the New Sheriff ſhall be chargeable for no other Priſoners, than what are delivered over to him by Indenture.

For what Priſoners the New Sheriff ſhall be chargeable.

Eſcape.

And herewith agreeth Smalmans caſe in Leonard; a Capias upon an Original was delivered to the New Sheriff of Warr. againſt Lane, at the ſuit of the Plaintiff, and the Sheriff informed the Court, that before

Execution executed by the Old Sheriff.

before the Cap. directed to him, Lane was taken in Execution by the Old Sheriff, and that the Old Sheriff had impriſoned him in his houſe, and there he remained; And thereupon he prayed the advice of the Court, what return to make upon this matter, becauſe Lane was never in his poſſeſſion, but all the other Priſoners were delivered to him by the Old Sheriff; And it was the opinion of the whole Court, that by the Law the Old Sheriff ought to deliver the body of him who is in his cuſtody, by view to the New Sheriff, and from that time the Law ſhall adjudge ſuch Priſoner to be in the cuſtody of the New Sheriff, and not before.

The Old Sheriff to deliver his Priſoners to his ſucceſſor.

Where the New Sheriff is chargable upon an arreſt by the Old Sheriff.

Return.

But where the Old Sheriff arreſts a man, and afterwards returns a languidus in priſona, and afterwards in exitu ab officio delivers him to the New Sheriff charged with the arreſt, and then the New Sheriff ſuffers him to eſcape, here the New Sheriff is only chargeable with the eſcape; and although the Old Sheriff returned a languidus in priſona, yet that is not material to the Plaintiff, he remaining always in priſon, and that return was only to excuſe the bringing of the Priſoner at the day.

King verſ. Sir Euſeby Andrews, Cr. Jac. 380.

If the Old Sheriff keeps goods in his hands, what remedy.

The Sheriff ſeiſed goods upon a Fi. fa. and upon a Venditioni expon. he returned non invenit emptores, then his Office determined, and he ſtill detained the goods in his hands; And by Doderidge and Jones, cæteris abſentibus, the Plaintiff hath no other remedy againſt the Old Sheriff, but to have ſmall iſſues returned upon him.

Dixons caſe, Latch 117. See afterwards ſo.

If the Old Sheriff ſells goods after he is diſcharged from his Office, yet the ſale is good.

Writ.

Authority.

Upon a Fi. fa. the Sheriff ſeiſed goods to the value of the debt, and paid part of it, and the goods not being ſold, nor the Writ returned, the Sheriff was diſcharged of his Office, and afterwards ſold the reſidue of the goods without any Venditioni exponas; and the Court held that this ſale was good, for the Fi. fa. without any other Writ, is a ſufficient authority for the Sheriff to ſell the goods; and although when he made the ſale he was diſcharged of his Office, yet when he took them, he being in his Office, it is good enough.

Ayre verſ. Alen Cr. Jac. 73. Rolls tit. Execution 893. accord.

Return by the Old Sheriff to the New.

By the name of nuper Vic.

A Venire facias was returned thus, per T. R. Vic. Iſtud breve cum panello annexo mihi deliberat. fuit, per T. H. Mil. nuper Vic. in exitu ab officio; Et ſic indorſat. T. H. Mil. nuper Vic. this was aſſigned for Error, becauſe it did not appear that it was returned by any one who had authority; for in ſaying nuper Vic. it is as much as to ſay, that he was not Sheriff at the time of the return made: But per Cur. it is good enough; for it appears by the Record, that T. H. Mil. was Sheriff next before T. R. alſo if he had returned it, and put only his name to it, it had been good enough; but then nuper Vic. coming after it, it ſhall be intended that he returned it when he was Sheriff.

Bethyll verſ. Parry, Cr. Car. 189, 190.

The form of a Return upon a Writ directed to the Old Sheriff, and executed by the New.

If a Writ directed to the Sheriff is executed, and afterwards a new Sheriff is elected, the ſucceſſor ought to return the Writ in this manner: Recepi hoc breve prædeceſſori meo direct. ſic indorſat. &c.

Palmer verſ. Marſh. Tr. 39 El. B. R. Rolls 2. part, 457. Egerton verſ. Morgan & al. Bulſtrode 1 pt. 70 uſque 79.

So likewiſe in caſe of a new Bailiff.

So if upon a warrant directed to the Bailiff of a Franchiſe, to execute a Writ; this is ſerved, and afterwards, and before the return thereof, the Bailiff is removed, and a new Bailiff elected, the return

Rolls Abridg. 2 part, 457.

to

to the Sheriff ſhall not be in the name of the elder Bailiff, but of the new Bailiff in the ſame manner aforeſaid, for the elder Bailiff is now a meer ſtranger.

Rolls Abr. 2. part. 458. But if a Writ directed to the Sheriff is not executed by him, and nothing done in the execution thereof before the Old Sheriff is removed, but afterwards the New Sheriff executes it, this ſhall be returned generally in the name of that Sheriff which executed it, without making any mention of his predeceſſor. *Where the Old Sheriff doth not execute it, how to be returned by the New Sheriff.*

Ibid. The ſame Law is likewiſe in the caſe of a Bailiff of a liberty. *So likewiſe in caſe of a Bailiff.*

19 H. 6. 38. Rolls Abr. 2. part. 458. If the Old Sheriff upon the Venire return twelve Jurors, upon the Diſtringas the ſucceſſor cannot return that one Juror Nihil habet, for if he had a return of the Venire facias, the ſame land is yet chargeable with the iſſues, although he hath alienes it, and the ſucceſſor ſhall be bound by that return of the predeceſſor which he made, and if it be falſe, he may have a Writ of deceit againſt him. *Where, upon the Return of a Venire fac. the Old Sheriff concludes his ſucceſſor.*

Perkiſon verſ. Gilford, Cr. Car. 539, 540. If the Sheriff levies goods, and dies before ſatisfying of the Plaintiff, an action of debt will lyes againſt his Executors, but where the Sheriff is chargeable in his life time for a perſonal tort, or miſeazans, there his perſon is only chargeable, and action, moritur cum perſona. *Where an action of debt lyes againſt the Sheriffs Executors.*

Empſon verſ. Bathurſt, Winches Rep. 51. If the Old Sheriff makes an Extent, and before the liberate a New Sheriff is choſen, here the New Sheriff ſhall have the Fees appointed by the Statute, and not the Old Sheriff, per Hobert Chief Juſtice int. Empſon & Bathurſt. Winch. Rep. 51. *Where the New Sheriff ſhall have the Fees, for an Extent made by the Old Sheriff.*

Boucher verſ. Wiſeman, Cr. El. 440. A Fieri fac. was delivered to the Underſheriff, who executed it the ſame day that the Writ of diſcharge came to the High Sheriff, but becauſe it could not be proved that the Underſheriff had notice of the Writ of diſcharge before the Execution executed, it was held by the Court that the Execution was well executed, and that the Old Sheriff was chargeable for it. *Execution executed the ſame day that the Writ of diſcharge came, and good.*

SECT. 4.

What Obligations, Judgements, or Promiſes, taken by Sheriffs of their Priſoners are good, and what not.

23 H. 6. c. 10. By the Stat. of 23 H. 6. cap. 10. it is Enacted, that all Sheriffs, and all other Officers and Miniſters, ſhall let out of priſon all manner of perſons by them or any of them arreſted, or being in their cuſtody, by force of any Writ, Bill, or Warrant, in an action perſonal, or by cauſe of Indictment for Treſpaſs upon reaſonable ſureties of ſufficient perſons, having ſufficient within the Counties where ſuch perſons be ſo let to bail or mainprize, to keep their days in ſuch places as the ſaid Writs, Bills, or Warrants, ſhall require, (ſuch perſon or *Who ſhall bail Priſoners.* *What Priſoners to be bailed.* *Upon what ſureties.* *When to appear.*

what persons not bailable.

persons which shall be in their Ward by condemnation, execution, Capias Utlagatum, or Excommunicatum, surety of the peace, and all such persons which be or shall be committed to Ward by the special command of any Justices; and vagabonds, refuseing to serve according to the form of the Statute of labourers only excepted.) And that no Sheriff, nor any of his Officers or Ministers aforesaid, shall take, or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their office, but only to themselves, of any person, nor by any person which shall be in their Ward, by course of the Law, but by the name of their office, and upon Condition written, that the said prisoner shall appear at the day contained in the said Writ, Bill, Warrant, and in such places as the said Writs, Bills, or Warrants, shall require. And if any of the said Sheriffs, or other Officers, or Ministers aforesaid, shall take any Obligation in other form, by colour of their offices, that it shall be void. See Plowdens Com. 67, 68.

what Bonds may be taken.

How to be taken.

what Bonds to be void.

This Statute consisteth of two parts, the one, for the benefit of the Sheriff, the other, for the party arrested. Sir Geor. Clifton verſ. Web, Cr. El. 808.

Where the Statute is for the benefit of Sheriffs.

That which respects the benefit of the Sheriff is, that he shall take Bonds with sureties for the indempnifying of himself, which if he be amerced he may sue against the parties bound, or if he be sued for not having the body at the day, he may plead in bar.

And where for the benefit of the party.

That clause for the benefit of the party is, that the Sheriff under colour of his office should not oppress the party, to make him any other manner of Obligation, than what is prescribed in the before-mentioned Statute. Plowdens Com. 67. a.

The several branches of the Statute.

This Statute amongst other things hath three notable branches: Plowdens Com.

1. A command and authority for a Sheriff, &c. to let prisoners to bail.

2. What prisoners are not bailable; both which are made in affirmance of the common Law.

3. The Purveyors only in the third branch, and that is, to avoid Obligations taken in other forms than what are expressed in the Statute.

what the common Law was before this Stat.

Before the making of this Statute, the inconvenience was such, that when a man was in execution, the Sheriff would take upon him to let him at large, taking a Bond from him to save him harmless, and those Bonds which they took, were generally treble the summe in which the parties were condemned, which proved very prejudicial both to the plaintiff and defendant, for the plaintiffs only remedy was to sue the Sheriff for an escape, and was put to great costs and trouble in his prosecution, and when he recovered, he recovered no more than his debt with ordinary costs, and was kept out of his money a year or two, by these contrivances and practises which were too frequently used by Sheriffs, before the making of this Statute, and they were sometimes so tired out with the continual trouble and charge which doth inseparably attend an action in that nature, that they did oftentimes sit down with half their debts, rather than undergo the trouble of prosecuting. Plow. Com. 67. b.

The inconveniencies.

And

And on the other ſide, the Sheriffs were ſure to be ſaved harmleſs by the ſecurity which they had taken from their priſoners, and by this means their bribery had ſafe conduct: to prevent which grand abuſes, this Statute was made. Upon ſeveral branches of which Stat. ſeveral Expoſitions and late Judgements in Law have been given by the Learned Judges, in the ſeveral Courts at Weſtm. *The occaſion of the making of this Stat.*

That the Sheriff, and all other Officers and Miniſters, &c.

Johns verſ. Stratford, Cr. Car. 309. Stiles Rep. 234.

Officers, &c. This word Officer being a general word, it was doubted, whether a Serjeant at Arms was ſuch an Officer as was intended by this Statute to take Bonds, &c. Henden Serjeant was of opinion that it extended only to Sheriffs, and their Bailiffs, and other Officers, and guardians of Priſons, to which conſtruction the whole Court ſeemed to incline. And as Rolls Chief Juſtice hath obſerved Styles Rep. fo. 234. that a Serjeant at Arms is out of this Stat. *The extent and meaning of the word, Officer in the Statute.* *Serjeant at Arms.*

Bracebridge verſ. Vaughan, Cr. El. 66.

In 29. El. int. Bracebridge and Vaughan, it came in queſtion whether the Marſhal of the Kings Bench was an Officer within this Act or no; and it was there held by Wray Chief Juſtice that he was included in that Statute, and ſo are divers perſons intended in the purview of the Statute, though not there mentioned: according to which opinion it was adjudged in Mich. 29. El. int. Widdow and Clerk, that the Major of a Corporation although not named in the Statute, was included in the purview thereof. *Marſhall of the Marſhalſey.* *Major of a Corporation.*

Shall let out of Priſon, &c.

Widdow verſ. Clerk, Cr. El. 76, 77.

At the cloſe of this Statute it is provided, that all Sheriffs, Bailiffs, &c. which do contrary to this Act, ſhall forfeit treble dammages, and 40 l. to be divided betwixt the King and Informer; upon which clauſe an action of debt was brought for 40. l. in Mich. 29. El. Cr. Eliz. fo. 76. the plt. ſet out in his Decl. that he was ſued in the Court at Nottingham before the Major and Sheriffs, &c. and was afterwards taken and impriſoned, &c. and that he being ſo in cuſtody of the Major, he offered ſureties to appear, &c. which ſureties the Major refuſed, and ſtill kept him in priſon, and for the matter, (upon a motion in arreſt of Judgement) the Court was clearly of opinion that the plt. ſhould have Judgement, but it was afterwards moved that foraſmuch as by the Stat. of 18. Eliz. it is provided that no action ſhall be brought upon Penal Statutes by Information or Original, and not otherwiſe in the negative, and this action being brought by Bill; for this cauſe only and no other, nil cap. per Billam was awarded. *The penalty that the Sheriff undergoes for not bailing Priſoners.* *Major.* *How this action to be brought.*

18 El. c. 5.

10 R. 101. Cotton verſ. Wale, Cr. El. 862. Barton verſ. Aldworth, Cr. El. 624.

But Nota the Sheriff is not bound to let a priſoner to bail, except he tender two ſufficient ſureties. *What ſecurities he muſt take.*

By force of any Writ, Bill, or VVarrant, &c.

Stephy verſ. Loyd, Cr. El. 6, 6, 647.

Writ, &c. Although the Statute ſpeaks generally of any Writs, &c. yet it is intended of ſuch Writs which required bail at the Common Law, before the making of this Statute; and therefore where the Sheriff took a Bond of the deft. (who was arreſted by virtue of an *To what Writs bail for appearance muſt be taken.*

Not to Attachments out of the Court of Requests.

attachment out of the Court of Requests) to appear before the Kings Council attending in the Court of Requests at Westm. &c. it was adjudged by the whole Court that the process was not any warrant to the Sheriff to take the body nor the obligation; and although it was urged, that in regard he took this Bond colore officii, although he was never lawfully in his custody, and then the Bond is within the words of the Statute, yet Curia contra, for the Statute intends Bonds which are taken of such persons who are in custody by due course of Law, but the Bond here taken was by Duress, and so avoidable. But upon an attachment out of the Chancery the Sheriff took a Bond to appear, &c. and there the Court was of opinion, that it was within the Statute.

Colore officii.

But to Attachments out of the Chancery.

Burton verſ. Low, Stiles Rep 234. Bewſages Caſe, 10. R. 100.

Upon reaſonable Sureties, of Perſons having ſufficient within the County.

What ſureties muſt be taken.

Upon reaſonable Sureties: The word Sureties being in the plural number, the queſtion was, whether an Obligation taken by the Sheriff with but one ſurety were good or no; on the defendants part it was alleadged, that the plural number cannot be ſatisfied with the ſingular number, becauſe it is againſt the very words of the Stat. but it was reſolved by the whole Court that the Bond was not void, for the words, upon reaſonable ſureties of ſufficient perſons, are added for the ſecurity of the Sheriff, and therefore if he will take but one ſurety, it is at his peril, for he ſhall be amerced if the defendant doth not appear, and therefore the Statute makes not the Bond void in ſuch caſe, for the branch, which preſcribes the form, requires that the Bond ſhall be made to the Sheriff, by the name of his office, &c. that the priſoners ſhall appear, in which clauſe no mention is made of the ſureties; ſo that the intent of the Stat. was, that inſomuch that this was at the peril of the Sheriff, to leave it to his own diſcretion to take one, two, or more ſecurities, as he thought fit.

One ſurety only, and yet good.

The form of the Bonds.

Bewſages 10 R. 100. b. 101. Druries Caſe there cited. Clifton verſ. Web. Cr. El. 808. Scryven & Dyther Cr. El. 672.

Of Perſons having ſufficient within the County, &c. Although the words of the Statute here are, Having ſufficient, &c. yet although the ſurety or ſureties have not ſufficient within the ſame County, the Bond is good enough, for the words of the Stat. as to this point are more for counſel or direction to the Sheriff, than for reſtraint or precept to him: alſo this clauſe is made for the benefit and advantage of Sheriffs, for if the defendant cannot procure two ſufficient ſureties, having ſufficient within the ſame County, the Sheriff is not bound to let him to bail; and this expoſition agrees with the antient Rule, Quilibet poteſt renunciari juri, pro ſe introducto. And according to this reſolution it was afterwards reſolved, that a Bond taken by the Sheriff of one which was not an inhabitant in the County, nor had any eſtate there, was good, notwithſtanding the words of the Statute, for the reaſons aforeſaid; and alſo for that the Stat. doth not make void any Bonds, but ſuch only which are made in other form, in oppreſſion of the people: ſo likewiſe where the defendant pleaded, that the plaintiff took the Bond of him and a ſtranger, which ſtranger had nothing in the County, nor did not there inhabit, upon a demurrer to the plea it was ruled according to the former reſolutions in every particular.

What perſons may be ſureties.

This clauſe rather for direction than precept.

What ſureties may be taken.

What Bonds are void by the Statute.

10. R. 101. Bewſages Caſe. Cotton verſ. Wale, Cr. El. 862. Barton verſ. Aldworth, Cr. El. 624. Blackbourn verſ. Michelborn, Cr. El. 852. Sir Geo. Clifton verſ. Web, Cr. El. 808.

And

And that no Sheriff, &c. ſhall take, or cauſe to be taken, any Bond, for any cauſe aforeſaid, or by colour of their Offices, but only to themſelves, by the name of their Office, &c.

Any Bond, &c. There are three forms to be obſerved for Bonds which come within this Statute.

The forms to be obſerved for Bonds which come within this ſtat.

Cotton verſ. Wale, Cr. El. 862.

1. It muſt be made to the Sheriff himſelf.

2. To him by the name of his Office.

3. That it ſhall be only for appearance at the day.

All which circumſtances being duly obſerved, although the Bond be ſomething variant in other circumſtances, it is not material, but Bonds made for the Sheriffs profit in oppreſſion of the people, are made void by this Statute. Upon a Cap. in placito debiti for 320 l. the Sheriff took a Bond but for 100 l. all which matter being diſcovered in pleading by the Defendant, the Plaintiff thereupon demurred, and it was objected, 1. That the Bond was void, becauſe the Condition was only ad reſpond. in placito debiti generally, which is uncertain, for it may as well be in an Annuity, &c. Alſo the ſumme ought to be ſhewn in the Condition, that the Defendant may have Conuſans what to anſwer to, but the Court over-ruled them in it, and ſaid that it was well enough. A ſecond exception was becauſe the Bond is for 100 l. being for an appearance only, whereas it hath been adjudged a 40 l. Bond is ſufficient, and therefore the taking of a greater Bond is extortion, and void within the Statute, for if the Sheriff ſhould have ſuch an unlimited power, he might take a Bond of 1000 l. and ſo oppreſs the Subject; but the Court were of a contrary opinion likewiſe as to this Objection, for the Statute being general, doth not reſtrain him to any ſumme or any ſureties, for he may take one or two or more ſureties according to his diſcretion, and when it is only for the appearance of the party, he may take what ſumme he pleaſeth to force the party to appear: and although a Bond of 40 l. is ſufficient to excuſe him for an Eſcape, becauſe by the Statute he is forced to let him to bail, yet non ſequitur that he ſhould be reſtrained from taking a Bond with a greater penalty. Alſo Bonds taken by Sheriffs, &c. ought to be certain and true Latin, for where the Sheriff took an Obligation for appearance in quadragenr. libris, whereas it ſhould have been quadragint. for this very reaſon a Nil cap. per Billam was awarded.

Villers verſ. Haſtings, Cr. Jac. 286.

If it be good in ſubſtance, though not in ſome circumſtances, yet within the ſtat.

Ad reſpond. in placito deb generally, and good.

With what penalty the Sheriff may take a Bond for appearance.

They muſt be true Latin, otherwiſe void.

Feilder verſ. Tovey, Sheyles Rep. 257, 258.

By colour of their Offices: If the Sheriff arreſt a man in his own County, and afterwards carries him into another County, and there detains him untill he hath given him a Bond for appearance, this Bond is out of the Statute, but the proper and only remedy which the Defendant hath to avoid this Obligation, is to plead per Dureſs to it. So likewiſe if a Proceſs comes to the Sheriff, to take the body, &c. which the Sheriff doth accordingly, and takes an Obligation for appearance, but by Law the Proceſs was not any warrant to the Sheriff to take the body, (it iſſuing out of a Court which had no authority to grant it) here this Bond was taken by Dureſs, and ſo chaidable

Arreſt in one County, and takes a Bond in another County.

Brown verſ. Druus, Cr. Jac. 745.

Dureſs.

A Bond taken upon a Proceſs, iſſuing out of a Court which had no authority to grant it.

Stepny verſ. Loyd, Cr. El. 646.

avoidable by the award of the Court, although it was alledged, that the Sheriff took it colore officii.

By the name of their Office.

But only to themſelves, by the name of their Office: herewith agrées expreſly Cotton and Wales caſe, Cr. El. 862. and Villers and Haſtings caſe, Cr. Jac. 286. The Sheriff took a Bond of one in his cuſtody by the name of B. W. Armiger. but omitted Vic. Com. Oxon. Afterwards a ſtranger, without the Sheriffs privity, interlines theſe words, (Vic. Com. Oxon.) the Defendant did not appear, whereupon this Bond was ſued, and the Defendant pleaded generally, non eſt fact. and all this matter being found by ſpecial verdict, it was upon long debate adjudged for the Plaintiff, becauſe the Defendant had not made uſe of thoſe advantages which he might have had; for he ſhould have craved Oyer of the Bond, and if it had appeared to have been the Bond of the Sheriff, taken by him as Sheriff, this would then have made it void; but the pleading non eſt fact. and taking no notice of the Statute, (which he ought to have pleaded, being no general Law) the Court ſhall ſuppoſe, that this Bond was taken by him as B. W. only, and not as B. W. Vic. &c. and this interlineation being made by a ſtranger, without the Plaintiffs privity, and not being in a place material, ſhall not hurt the Bond.

Cr. El. 862. Cr. Jac. 286. Winchcomb verſ. Pigot, Bulſtrodes Rep. 2 part. 246, 247, 248. Pigots caſe, 11 R. 26. b. 27, 28. Plo. Com. 65.

When interlineation ſhall vacate a Bond.

How to avoid it for that cauſe

Non eſt fact. no plea to it.

Stranger.

Upon condition written, that the Priſoner ſhall appear at the day contained in the ſaid Writ, &c. as is before obſerved upon the word Bond:. One of the eſſential parts of this Statute is, that the Bond therein preſcribed, muſt be with condition to appear at the day contained in the Writ, &c. and that all Bonds taken in other form ſhall be void; although Sheriffs are not tyed up preciſely to the words in the Statute, ſo that the conditions be good as to the matter and ſubſtance thereof, it ſufficeth: And herewith agréeth the caſe of Seckford verſ. Wolverſton, Paſ. 26 Eliz. where the Sheriff took a Bond with condition, that if the Defendant perſonally appear in the Kings Bench at Weſtm. there to anſwer, &c. that then, &c. And it was moved, that this Bond was void: Firſt, becauſe this word perſonally was put into the condition, which was more than the Statute required; but as to this the Juſtices were all of opinion, that the Bond was good enough. Secondly, the condition went further, viz. and there to anſwer; which was likewiſe more than the Statute required; and as to this point Wray Chief Juſtice put a difference, where the words are there to anſwer, the Bond is well enough, but if the words had been appear and anſwer, then the condition had been void, for it may be the Plaintiff will never declare againſt him; but Gaudy and Ayloff Juſtices were of opinion, that the Bond was void; ſo likewiſe where the condition of the Bond was, that if the ſaid R. D. perſonally appear before the Queens Majeſties Juſtices at *Weſtm. à die Paſc. in Quindecim dies*, to anſwer J. H. as ſhall appertain, and further to do and receive as the Court therein of him ſhall conſider in that behalf, that then, &c. the Defendant pleaded the Statute, and upon a Demurrer it was adjudged, that the Bond was void: So likewiſe in Mich. 1650. where upon an action of Debt brought upon a Sheriffs Bond, and upon Oyer of the condition it was, That the Defendant ſhould appear *tali die in Cancellaria apud* Weſtm. *ubicunque fuerit*; to which the Defendant pleaded the Statute, and the Plaintiff demurred upon him, and ſeveral exceptions were taken by the Counſel; Firſt, becauſe the party was bound to appear in a Court, which was not a fixt Court, for

Cr. Jac. 286. See Plo. Com. 62. b. uſque 69. Leonard 2. pt. 78. caſe 103. Scryven verſ. Dyther, Cr. El. 672. Barton verſ. Lowe, Styles Rep. 234.

When the appearance muſt be.

Conditions.

Surpluſage.

Diverſity.

Condition.

The form of the Stat. not purſued.

To appear apud Weſtm. ubicunque, &c. uncertain.

for the Court of Chancery is a movable Court, and not a fixt Court, to Weſtm. or any other place. Secondly, the condition is impoſſible, for it is, that the Defendant ſhall appear in the Chancery at Weſtm. ubicunque fuerit, and ſo it is impoſſible for him to appear at Weſtm. and at another place at the ſame time. Thirdly, the Bond varies from the Statute in ſome things, and enjoyns more than the Statute requires in other things; and by Rolls and Jermyn, here is a material variance in the Bond, which makes it void, for neither the Kings Bench nor Chancery are fixt Courts, and therefore the Defendant ought not to be preciſely bound to appear at Weſtm. and then the adding of ubicunque, &c. is a fatal fault, and for this reaſon a nil capiat was awarded to be entred.

Impoſſible.

Where the Bond is deficient, and where it enjoyns more than is required.

The Statute ſaith, that the condition muſt be for the Defendants appearance at the day of the return of the Writ. I have met but with one caſe to this purpoſe, which I will here give you an account of, it being a caſe in the point. In an action of debt upon a Sheriffs Bond, the Defendant ſets forth the condition, which was, that he ſhould appear die Sabbati, &c. to which he pleads, that the Writ by which he was taken was returnable die Veneris, &c. and then ſets forth the Statute; the Plaintiff replyes, that the Writ was returnable die Sabbati, &c. and not die Veneris, &c. the Defendant rejoyns and maintains his Bar, and traverſes with an abſque hoc, that it was returnable die Sabbati, &c. and to this the Plaintiff demurres: The firſt Exception which was ſhewn was, that the Defendant was concluded to ſay, that the Writ was returnable die Veneris, becauſe the condition of the Bond had concluded him; But the Court was againſt this Exception, for the Statute makes all Bonds taken by Sheriffs void, if not according to the Statute, notwithſtanding the recital in the condition, otherwiſe the Statute would be of little force. Secondly, it was moved, that the Rejoynder was not good, becauſe the Defendant ought to maintain his Bar, and conclude, Et de hoc pon. ſe ſuper patriam, &c. there being a negative and affirmative before, by the Bar and Replication: But Twiſden and Wyndham Juſtices were of opinion, that the Rejoynder was good enough, becauſe it was material to enquire, whether there was any Writ returnable die Sabbati, for the Defendant in his Bar ſayes, that he was taken by Writ returnable die Veneris, which being different from the condition of the Bond, doth not warrant it; and the Plaintiff in his Replication ſayes, that he was taken by the ſame Writ mentioned in the condition, ſo that if he had ſaid no more, there had been only two affirmatives; and his allegation that there was no falſe Writ, being not material to the iſſue, the Defendant made a good Traverſe in his Rejoynder, and according to theſe opinions it was afterwards adjudged.

When the Defendant muſt appear.

Bennet verſ. Filkins, Mich. 18 Car. 2. Rs. in B. R.

The Bond was to appear die Sabbati, *and the Writ was to appear* die Veneris.

Condition.

Eſtoppel.

Recital.

Concluſion.

Rejoynder.

Traverſe.

And all Bonds in other manner and form, taken by colour of their Offices, ſhall be void: This Act, as hath been before obſerved, hath abridged the Common Law, as to Bonds taken by Officers, and tyed them to a ſtrict form; but this caution muſt always be obſerved, that this being a particular Act in a generality, it ought to be pleaded when any Bond is to be avoided, otherwiſe the Court cannot take notice of it; and although the Statute ſpeaks generally of all Bonds made in other form, &c. yet it is to be intended of the matter of the Bonds, as to the Sheriff: Theſe words, by colour of his Office, are general words, and extend to other Bonds taken colore officii, as well as to thoſe

Plo. Com. 65.

Blackbourn verſ. Michelbourn, Cr. El. 852. Cotton verſ. Wale, Cr. El. 862.

He which will take advantage of this Act, muſt plead it.

To what Bonds this Stat. extends.

those taken of persons in their Ward; for where the Sheriff upon the executing of an Execution, took a Bond for the payment of his Fees, and brought an action upon it, the Defendant pleaded to it the Statute of 23 H. 6. and the Court conceived, although he might have such Fees as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fees: But where the Sheriff hath taken Goods in Execution, and afterwards takes a Bond of the Defendant to pay the money at the day, this Bond is good, and not to be avoided by the Statute; But where a Sheriff, &c. takes a Bond of his Prisoner for meat and drink, &c. this is colore officii, and yet utterly void, for the Law saith, if a man be in Execution, he ought to live of his own, and the Plaintiff nor the Sheriff are not bound to give him meat nor drink, but if he hath nothing to live upon, then he must live upon the charity of others, and if that fail, the Book saith, let him dye in the name of God. It is likewise to be observed, that although the Statute here makes mention of Bonds, &c. only, yet promises made against the intent of this Statute, come likewise under the lash of it; and so it was adjudged, Mich. 32 El. where the Plaintiff declared, that he had taken the body of one H. in Execution, by warrant directed to him as special Bailiff; the Defendant as well in consideration that the Plaintiff would permit him to go at large, as of 2 s. paid in hand, promised to pay the Plaintiff all the money in which H. was condemned; and it was moved, that this consideration was void, being contrary to 23 H. 6. and although it be joyned with another consideration, yet it being void as to part, shall be void in all: So likewise where J. S. promised A. Gaoler, that if he would let a Prisoner which he had then in his custody go at large, that then he would pay him so much money, for the breach of which an action was afterwards brought, and a verdict thereupon had, but Judgement was staid by the opinion of the whole Court.

The Sheriff cannot take Bond for his Fees.

But to pay money to him at the return of the Fi. fa. he may take Bond.

Yet for meat and drink, &c. he cannot take it.

For if the Prisoner be poor, he must live upon charity, or starve.

What promises are within this Stat.

Promise made to a Gaoler to suffer a Prisoner to go at large, void.

Sympson verſ. Barthurſt, cited by Jones Justice, inter Lyster & Bromly Cr. Jac. 286, 287.

Bewfages caſe 10 Rep. 100, 101, 102.

Plo. Com. 67 b

Fetherſton verſ. Hutchins Cr. El. 199; 200. Plo. Com. in Maninghams caſe.

Blithman verſ. Martin, Bolſtrode 2 part 213.

CAP.

CAP. III.

Sheriffs Fees.

SECT. 1.

What Fees Sheriffs may lawfully take, and how to be recovered.

29 El. c. 4.

What Fees Sheriffs, &c. may take upon executing Executions.

By the Statute of 29 El. cap. 4. it is enacted and directed, That upon Extents and Executions, the Sheriff ſhall or may take twelve pence of and for every Twenty ſhillings, where the ſum exceeds not one hundred pounds; and ſix pence of and for every Twenty ſhillings being over and above the ſaid ſum of one hundred pounds: Provided, that this Act ſhall not extend to any Fees to be taken for any Execution to be had within any City, or Town Corporate.

Not to extend to Corporations

Upon this Statute ſeveral Queſtions have been raiſed:

Walden verſ. Veſteys Latch Rep. 19.

1. Whether Debt lyes for the Sheriff for his Fées? and it hath been adjudged, that it doth; for when a Statute doth not expreſs what remedy ſhall be had for a Fée, or Forfeiture, &c. in ſuch caſes Debt lyes for the ſame.

1 Queſt. whether Debt lyes for the Sheriff upon this Stat.

2. The ſecond Queſtion upon this Statute is this: The Sheriff makes a warrant to the Bailiff of a Liberty, to make Execution, whether the Sheriff or the Bailiff ſhall have the Fée? becauſe the Statute ſayes, that the party which makes the Execution ſhall have the Fée.

2 Queſt. Who ſhall have the Fee, whether Sheriff or Bailiff.

Alſo, if the old Sheriff makes an Extent, and afterwards the new Sheriff makes the Liberate, what Sheriff ſhall have the Fée, and which of theſe Sheriffs ſhall be ſaid to make Execution?

Whether the old or new Sheriff ſhall have it.

3. The third Queſtion hath been, (whereas the Statute ſayes, that the Sheriff ſhall have 12 d. in every 20 s. where the Debt exceeds not 100 l. and 6 d. for every 20 s. where it is above 100 l.) whether the intent of this Statute is, that if the Debt be 140 l. the Sheriff ſhall have for the 100 l. 12 d. in the pound, and 6 d. in the pound for the 40 l. or but 6 d. in the pound for the whole 140 l.?

3 Queſt. How much he ſhall have if it exceeds 100 l.

Latch 17.

Alſo, whereas the Proviſo in the ſaid Statute ſayes, that theſe Fées ſhall not be taken, for any Executions had in any Town Corporate, and the Sheriff enters into a Corporation, and executes an Execution, whether he ſhall have the Fée, or whether this clauſe extends only to Executions upon Judgements in inferior Corporations?

If he enters a Corporation, what Fees he ſhall have.

Debt lyes by the Sheriff for his Fees for executing an Execution.

As to the first point: Trin. 36 Eliz. in Com. B. Debt was brought by the Sheriff of London, for Fées for executing a Cap. ad sat. for 12 d. in the pound for the first 100 l. and 6 d. in the pound for the residue, and it was demurred unto by the Defendant; and the only cause insisted upon was, whether this action lyes or no, there being no action given by the Statute: but the Court held, that it did well lye, sed adjornatur. And afterwards in Mich. 8 Car. the same action was brought, and upon a Writ of Error Judgement was affirmed: So likewise where the Defendant promised, that in consideration that the Sheriff would execute an Execution for him, he would pay him so much, &c. (which was allowed by the Statute for him to take) and Glanvill Justice was of opinion, that this was a void consideration, because at the Common Law a Sheriff ought not to take any Fées, but it was Extortion; and this Statute is made only to discharge a Sheriff from Extortion, if he take only such Fées as the Statute allows him to take; but the Statute gives him not any remedy for them, for he ought to execute the Writ at his peril, otherwise he shall be punished, and it is no excuse for him to say, that the party would not pay him his Fées: But all the other Justices held it to be a good consideration, because the Execution was made at his request, and to be a benefit to him; and by the words of the Statute, the Sheriff may lawfully take his Fées, and consequently a promise to have them paid: But it hath likewise been adjudged, that where the Sheriff took a Bond for the payment of his Fées, to which Bond the Defendant had pleaded the Statute of 23 H. 6. that he had thereby avoided it; for the Court conceived, although he might take such Fées as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fées.

Gurny & Somes case, Cr. El. 335.

Lyster verſ. Bromly, Cr. Car. 286, 287.

So likewise an an action upon a promise for Fees is maintainable.

Stanton verſ. Sulyard, Cr. El. 654.

Fees.

Extortion.

See Symsons case, cited int. Lyster & Bromly, Cr. Car. 287.

Excused from Extortion.

The Sheriff may lawfully take his Fees.

Symson & Bathurst, cited int. Lyster & Bromly, Cr. Car. 287.

23 H. 6.

He must not take a Bond for them.

Empsons case, Latch Rep. 20.

What Fees Bailiffs of Liberties shall have.

As to the second point, constant practice ever since the making of the Statute hath been, that the Bailiff of the Franchise shall have the Fées: the reasons may be, First, because the Statute says, that he that executes the Execution, shall have the Fée: and, Secondly, although I find this point moved in Latch 52. yet I find it not stirred in any other Book; from which this conclusion may be drawn, that the practice being so to this day, and no authority to contradict it, then consequently the Law is so likewise.

Whether the old or new Sheriff shall have the Fees.

But as to the other point it hath been adjudged, that if the old Sheriff makes an Extent, and before the Liberate a new Sheriff is chosen, here the new Sheriff shall have the Fées appointed by the Statute, and not the old Sheriff.

Empson verſ. Bathurst, Wynch Rep. 51.

Where the Sheriff is to have 12 d. in 20 s. and where 6 d.

Escape.

As to the third point, viz. What Fées, &c. It was alledged and argued by the Plaintiffs Counsel, to the first branch, that the Sheriff shall have 12 d. in every 20 s. for the 100 l. and 6 d. for every 20 s. above 100 l. because the greater the sum is, the greater is the Sheriffs labour and hazard, for fear of escape; and it would be contrary to reason, that his wages should be less for 180 l. than for 100 l.

Walden & al. verſ. Vesy & al. Latch Rep. 51. & 17. Lyster verſ. Bromly, Cr. Car. 286. Proby verſ. Lumly, Pasc. 14 Jac. Ro. 531.

Sheriff.

Corporation.

To the second branch he argued, that the Sheriff shall have his Fées notwithstanding the Proviso, 1. Because no man will deny, that if the Sheriff takes a Prisoner near the walls of the Town, but that he shall have his Fée, therefore there is no reason to the contrary, when he takes a Prisoner within the walls.

And

And doubtleſs the Proviſo is to be intended of Executions, made upon Judgements given in inferior Courts in Corporations, for it is not reaſon, that the Bailiff or Sheriff ſhould have ſo large Fées for taking a Priſoner which perhaps may live the next door to him, as he ſhall have for travelling about the County to take Priſoners: If the Law were not ſo, then doubtleſs theſe two great inconveniences would follow; *The Proviſo extends only to Executions upon Judgements given in inferiour Courts.*

1. The Sheriff having no Fée, would be very ſlow in making Executions, where the party lived in a Corporation, and ſo Juſtice, and the execution of Juſtice, which is much favoured in Law, and is fructus & effectus Legis, would be very much delayed. *The inconveniencies, if it ſhould be otherwiſe.*

2. If this conſtruction ſhould not be made, Corporations would become an Aſylum and refuge for decayed perſons.

Latch 52. And accordingly Judgement was afterwards given by the whole Court for the Sheriff Plaintiff. But Doderidge Juſtice ſaid, where a City is alſo a County, there if the Bailiff or Sheriff makes Execution, perchance he ſhall not take the Fées limited by the Statute. Jones Juſtice, it will be a queſtion, if an Execution iſſue out of the County, to take a Priſoner in a City, and the Sheriff makes his mandate to the Bailiff, whether he ſhall have the Fées by the Statute: but if the Town be alſo a County, there the Sheriff upon Execution out of this Court ought to have his Fées. *The difference where the City is likewiſe a County.* *Where the Sheriff makes his Warrant to his Bailiff.*

Lyſter verſ. Bromly, Cr. Car. 286, 287. & Gurny & Somes caſe, Cr. El. 335. agreeth expreſly. So likewiſe it was adjudged, Firſt, That the Sheriff ſhould have for the firſt 100 l. 12 d. in the pound, and but 6 d. for every 20 s. above 100 l. *What Fees, &c. Sheriffs ſhall have.*

2. That this Proviſo ſhall not extend to the executing of Executions from the ſuperiour Courts at Weſtm. but only for the executing of Judgements obtained in the Courts of the Corporations. *What Fees to be paid for Executions in Corporations.*

Thus much touching Fées for executing Executions.

Willſhires caſe, Hetleys Rep. 52. Brownlowes 2. part. 283. It was adjudged by the Court, that Sheriffs, &c. ought not to take any Fées, either for the breaking up, executing or returning of a Capias Utlagatum. *Muſt take no Fees upon* Cap. Utlagat.

Batho verſ. Salter, Latch Rep. 54, 55, 56. So likewiſe, where the Defendant promiſed the Plaintiff, that in conſideration that he would procure a ſpecial warrant from the Sheriff, and would arreſt J. S. that he would give him 40 s. and he ſets forth, that he had procured a warrant and arreſted him, per quod, &c. And it was hereunto moved in arreſt of Judgement; *Promiſe to pay 40. s. &c. for an Arreſt, is againſt the Stat.*

23 H. 6. 1. That this conſideration is againſt the Statute of 23 H. 6. *And void by the common Law.*

2. Admitting it to be out of the Statute, yet it is void by the Common Law, becauſe it is extortion to take a greater Fée, than the Law allows, to which all the Court agreed, and gave Judgement accordingly.

SECT. 2.

What the Sheriff may do in the Executing of *Cap. Utlagat.* Proceſs, and Executions, &c.

In the execution of a Cap. Utlagat. the Sheriff may take Poſſe Com and break open the houſe.

UPon a Cap. Utlagat. delivered to the Sheriff in Court, it was moved that the Sheriff ſhould be commanded to execute the writ, who replyed that he could not do it, becauſe the Defendant kept his houſe, to whom the Court anſwered, that he might take Poſſe Com. with him, and break open the houſe. Hare verſ. Curſon, Goldſbr. Rep. 79. Semayn verſ. Greſham, Cr. El. 908. 909. Park & al. verſ. Evans, Hob. 62.

Craft and force in executing a Meaſne Proceſs, puniſhed.

The Sheriffs Officers with a Warrant upon a Meaſne Proceſs came to the houſe where the Defendant lodged, and knockt at the doꝛ, whereupon the houſe-keepers wife came to the doꝛ, and opened it a little to ſee who was there, and the Bailiffs preſently with their ſwoꝛds drawn ruſht in by foꝛce, went up to the chamber-doꝛ where the Defendant lay, bꝛoke it open, and hurt divers in the houſe.

It was holden by the Court that the Entry was unlawfull, foꝛ the opening of the doꝛ was occaſioned by craft, and their entring in, was by violence, foꝛ which offences they were all fined.

So likewiſe where J. S. and J. N. were bound to C. and C. obtained Judgement againſt J. N. but foꝛbꝛe the executing of it, to ſee if any contribution ſhould be made; at length C. took of J. N. his debt and charges, and aſſigned over his Bond to J. N. to ſue S. in his name, whereupon J. N. ſues foꝛth a Latt. againſt J. S. in the name of C. and withall a Cap. Utlag. after Judgement at the ſuit of one J. D. a ſtranger, and ſent them both to the Sheriff, the Sheriff enters the houſe, (the outer doꝛ being open) and being within the houſe, and ſix Bailiffs with him, ſhut the doꝛs, dꝛew their ſwoꝛds, and pꝛeſently two of them with their ſwoꝛds dꝛawn, ran up to the chamber where the Defendant and his wife were in bed, (the doꝛ being lockt) and they knocking a little, without telling who they were, oꝛ wheꝛefoꝛe they came, bꝛoke open the doꝛ, and took him, and took Bond foꝛ his appearance upon the Latt. and 40 s. foꝛ ſuing out a Superſed. upon the Outlawꝛy, and ſo diſcharged him. Foꝛ this the Sheriff was fined 200 l. (viz.) foꝛ the unneceſſary teꝛꝛoꝛ and outrage of this arreſt, and foꝛ not ſignifying that he was Sheriff, that the doꝛ might have been opened without violence, but eſpecially foꝛ diſcharging the Plaintiff upon the Cap. Utlagatum. Waterhouſe & Ux. verſ. Saltmarſh, Hob. 263, 264.

The Sheriff muſt not enter by violence, or with drawn ſwords.

Nor breaking open doors, where no oppoſition is made.

Fined for the outrage, and for diſcharging the Defendant in the Utlawry.

Note, the Sheriff excuſeable, though there be no Original or Record to warrant the Proceſs brought to him.

The Sheriff at his peril muſt take notice of the right perſon, and the right goods.

If the Sheriff execute a Capias, and there is no Oꝛiginal to warrant it, oꝛ execute an Execution when there is no Judgement to warrant it, yet he is excuſable; but if Pꝛoceſs come to him to arreſt J. S. and he arreſts by virtue theꝛeof J. N. oꝛ if Execution comes againſt the goods of J. S. and he takes the goods of J. N. there he is a Treſpaſſoꝛ, foꝛ he muſt take notice of the perſon and of the goods at his peril, but if the Plaintiff comes to the Sheriff, and ſhews him Cattle, and tells Buckwood and Beales Caſe, Brownlow 1. part, 210, 211.

tells him they are the Cattle of J. S. whereas they are the Cattle of J. N. there the Sheriff ſhall have an action upon the caſe for this falſe affirmation.

Plaintiff puniſhable for his falſe affirmation, to induce the Sheriff to take either the wrong perſon or goods.

Weaver verſ. Clifford, Bulſtr. 2. Rep. 63, 64, 65.

The Sheriff is not to take notice of Error in Proceſs, becauſe he is not a competent Judge thereof, he is only a Miniſterial Officer, to execute ſuch Writs as are directed, which if he omits, he is puniſhable.

Although Proceſs be erroneous, yet the Sheriff muſt not take notice thereof.

What the Sheriff may do upon Executions againſt the Goods.

What the Sheriff may do upon the execution of a Fi. Fa.

Cr. 44. El. in B. B. Brownlow 1. part. 50. 5. R. 91. Cr. Jac. 555. Semaynes Caſe, Cr. El. 908, 909.

The Sheriff upon a Fi. Fa. may not break open the outer door of the houſe to enter and make Execution, but if the outer door be open, then he may well enter and break open any Chamber door, or other door which is lockt; he may likewiſe break open any Cheſt, and take the goods which are therein in Execution, and if he doth not, an action upon the caſe will lie againſt him.

May open a Chamber, or a Cheſt.

Note, He muſt therein avoid all craft and violence, vide ante, Waterhouſe verſ. Saltmarſh.

Day verſ. Buſbitch, 37. El. Rolls tit. Execut. 891.

The Sheriff cannot upon a Fi. Fa. take down a furnace, &c. and ſell it, becauſe this would be waſt, which the Law will never permit.

But Furnace fixt, not to be removed by Fi. Fa.

M. 31. & 32. El. Parke and Moſs verſ. Howe, Rolls tit. Execut. 893.

If a man recovers againſt J. S. as Executor to J. N. and ſues out Execut. de bonis teſtatoris, ſi, &c. & ſi non tunc miſ. &c. de bonis propriis, and afterwards and before Execution made by the Sheriff J. S. dies, if the Sheriff doth not find any of the goods of J. N. he may execute the Writ upon the proper goods of J. S. which he had at the time of the Execution awarded, although that they are now in the hands of his Executor or Adminiſtrator, without ſuing out a Sci. Fa. becauſe they were bound by the award of the Execution.

In ſome caſes the Sheriff may take goods in the Executors hands, without Fi. Fac.

Cr. El. 174. Parks and Moſſes Caſe, Cr. El. 181. Bourcher verſ. Wiſeman, Cr. El. 440. Dy. 219. & Bailes verſ. Domming, Paſc. 16. Car. 2. Reg. Rot. 338. in B. R. Thomſon verſ. Clerk, Cr. El. 504.

So likewiſe if a Fieri Facias is ſued out againſt the goods, and after the Teſte of it, and before the Sheriff executes it, the party ſelleth the goods bona fide, yet they may be taken in Execution in whoſe hands ſoever they come, for they are bound by the award of the Execution.

Goods are bound by the Teſte of Execution.

Upon an action of Trover for goods, the Defendant pleaded a Recovery, and a Fi. Fa. thereupon directed to the Sheriff who had ſeized the goods, and delivered them to him in ſatisfaction of his Execution; whereupon the Plaintiff demurred, and it was reſolved that the Sheriff cannot deliver goods to a Plaintiff, (upon a Fi. Fa.) in ſatisfaction of his debt, for the Sheriff by the Writ is to levy the debt, and to return his Writ to the Court, that they may adjudge whether Execution is well made or no.

Fi. Fac.

The Sheriff cannot deliver goods taken in Execution to the Plaintiff, in the ſame action, in ſatisfaction of his debt.

Ayre, verſ. Arder, Cr. Jac. 73.

The Sheriff may, if he think fit, ſell the goods without a Venditioni exponas, and the ſale ſhall be good.

He may ſell goods by him taken in Execution upon a Fi. Fa. without a Vendit. expon.

Rolls, tit. Execution, 900.

If a man recovers dammages againſt a Corporation, he ſhall not have Execution againſt every man of the Corporation in their natural capacity, but of the goods of their Corporation only.

How Execution to be leavied upon a Corporation.

The

Where goods are undervalued by colluſion, the Sheriff or party may be indicted for oppreſſion.

The Underſheriff took goods upon a Fi. Fac. and did not ſell them to half the worth of them, and upon motion it appeared to the Court that he had perſwaded the Jury to undervalue the goods, and accoꝛding to his perſwaſions the Jury appꝛized them, and then the Sheriff ſold them foꝛ the ſame money foꝛ which they were appꝛized. The Court held that this was a grand oppꝛeſſion, and thereupon oꝛdered an Indictment againſt the Underſheriff. Sayres Caſe Cr. Jac. 526. & Sly verſ. Finch, Cr. Jac. 514, 515.

Term for years, how to be extended.

How a Term foꝛ years muſt be extended, vide Chap. Elegit, in the Suppl.

VVhat the Sheriff may do upon Executions againſt the Body.

Ca. Sa. *He muſt not break open the doꝛ to execute a* Ca. Sa.

Upon a Capias ad ſatisfaciendum, the Sheriff muſt not bꝛeak open the doꝛ of any houſe to execute it, if he do, he is puniſhable. Semayne verſ. Greſham, Cr. El. 908.

Judgement againſt two, and one taken in Execution. Eſcape.

Two perſons were condemned in debt, one of them is taken by a Ca. Sa. and afterwards ſuffeꝛed by the Sheriff voluntaꝛily to eſcape; afterwards the other was taken in Execution, and he upon this matter bꝛought an Audita Querela, becauſe the one is diſcharged, not by his own wꝛong, but by the Sheriffs act, againſt whom the party is put to his remedy, but per Cur. this is no cauſe to diſcharge him. Blofields Caſe Cr. El. 478.

Newgate is a ſeveral Priſon, both for London and Middleſex.

Upon a Ca. Sa. to the Sheriff of Middleſex to take J. S. the Sheriff took him, and put him into Newgate, (which is the common Priſon both for London and Middleſex) afterwards Execution came to the Sheriffs of London; now although the Sheriffs of London are alſo Sheriffs of Middleſex, and Newgate is the Pꝛiſon foꝛ both Counties, yet the Pꝛiſoner ſhall not be in Execution upon the Wꝛit into London, noꝛ may the Sheriffs of London ſeꝛve this upon him, becauſe though the Pꝛiſon ſtand in London, yet he is in another County, as he ſtands chaꝛged, foꝛ when the Committment is to Newgate, by foꝛce of a Wꝛit to the Sheriff of Middleſex, he cannot be ſaid to be within the County of London, though the Pꝛiſon ſtand in London, foꝛ the Counties continue ſeveral, and the Pꝛiſons ſeveral, in reſpect of the ſeveral Committments. Coas Caſe P. 17. Jac. Rolls tit. Execution, 894.

A Priſoner in Newgate in London ſide, ſhall not be charged with Actions in Middleſex ſide.

When a man ſhall be ſaid to be in Execution, and the Sheriff chargeable with him, before he hath him actually in his cuſtody.

If one be delivered to the Sheriff in Execution by the Kings Wꝛit, the party is pꝛeſently in Execution in the Sheriffs cuſtody, without his laying his hands on him. Queſh & Ux. verſ. Carpenter, Bulſtr. 3. part. 62.

How to be made upon an *Habere facias Poſſeſſionem.*

Where a Common Recovery is had of ſeveral houſes, the Sheriff may deliver poſſeſſion in one, in the name of all. But it is otherwiſe where houſes are recovered by Ejectment.

If a Common Recovery be had of divers Meſſuages, the Sheriff upon the Wꝛit of Execution may make Execution in one of them, in the name of all, without going to every one in particular; but if a man is to be put in Execution of divers Meſſuages upon a Wꝛit of Execution, and the houſes are in the poſſeſſions of ſeveral men, he ought to go to every houſe particularly, and to deliver ſeiſin thereof, foꝛ delivery of ſeiſin in one, in the name of all, when they are in ſeveral mens poſſeſſions, is not ſufficient. Rolls tit. Execut. 886. Floyd verſ. Bether Rolls, tit. Execut. 886.

Land may be delivered in Execution, without ſetting forth the meets and bounds.

If a man upon an Ejectment, foꝛ 40. acres of Land, recovers 30. and not the reſidue, upon the Habere fac. poſſeſſ. the Sheriff may deliver Rolls tit. Execut. 886.

liber him three or more of the acres, in the name of the whole, without dividing of it by metes and bounds.

Ibid. If an Habere fac. poſſeſſ. go to the Sheriff, to put a man in poſſeſſion of twenty acres of land, the Sheriff ought to give him twenty acres in quantity, according to the cuſtome of the Countrey where this is, and not according to the Statute.

If the writ is for 20 acres, ſo much by eſtimation of the Countrey muſt be delivered.

Ibid. & 22. Aſh. 24. per Thorpe. If a man recover Rent or Common, whereupon a Writ of poſſeſſion iſſues out, and the Sheriff comes upon the land, and delivers ſeiſin of the Rent or Common, by word only, this is well done, and the recoveror is in actual poſſeſſion by it.

Upon a Recovery of Rent or Common, the Sheriff may deliver poſſeſſion by word only.

Semaynes caſe, 5 I R. 91. The Sheriff upon an Habere fac. poſſeſſionem, after a demand made to open the door, may break open the door, to deliver poſſeſſion of the houſe.

Upon an Habere fac poſſeſſ. *the Sheriff may break open the door.*

SECT. 3.

Of Executions by Elegit, and Extents.

Cowly verſ. Lideot. Bulſtr. 2. Rep. 97. 4. R. 65. a. An Extent upon an Elegit muſt be by inquiſition, per ſacram. duodecim proborum & legalium hominum, &c.

Elegit *how to be executed.*

Garraway verſ. Harrington, Cr. Jac. 567. So likewiſe muſt an Extent, upon a Recogn. or Statute, otherwiſe it is Error.

Extent *how to be executed.*

Sparrow verſ. Matterſake, Cr. Car. 319. Tr. 9. Car. Although Elegits, &c. are alwayes directed to the Sheriff, yet a Bailiff of a liberty may execute them within the equity of the Statute, which grants Elegits. There is a Caſe to this purpoſe in Tr. 9. Car. where, upon a Demurrer the Caſe appeared to be thus, The Sheriff returns upon an Elegit that the party had not any lands, but only in E. and that J. S. Bailiff there, had the Execution and Return of all Writs, who enquired and returned an Extent by Inquiſition, and that the Bailiff delivered the moiety of the land, ſo extended to the party, and the Plaintiff by virtue of that Extent entred and intitled himſelf, and hereupon the Court held, Firſt, that the Extent there made by the Bailiff of the liberty by warrant from the Sheriff, was good.

Extent *may be executed by a Bailiff of a Liberty.*

2. That the Jury ought to find all the land, and that the Bailiff (or Sheriff where no liberty is) ſhall deliver the moieties, and not the Jury.

The Jury muſt extend the land, and the Sheriff muſt deliver it.

Fulwoods caſe, 4 R. 65. 2. b. W. 2. ca. 18. So likewiſe where the Sheriffs of London grant their Warrant to a Serjeant at Mace, to extend lands upon an Elegit, it was adjudged, that the Execution was well executed, for the Stat. of Weſtm. 2. ca. 18. which provides that Proceſs ſhall be made to the Sheriff, is to be extended by equity to all other immediate Officers, to every other of the Kings Courts of Record, & eo potius, becauſe the Elegit and Fi. Fa. are coupled together, and limited, both to be executed by the Sheriff, and yet without queſtion, a Serjeant at Mace may execute a Fi. Fa.

An Elegit *executed by a Serjeant at Mace. The Statute of* W. 2. ca. 18. *is extended to all Sheriffs immediate Officers.*

SECT.

SECT. 4.

VVhat Lands ſhall be delivered in Execution, and when.

Huyt verſ. Cogan, Cr. El. 482, 483.

The Sheriff delivered a moiety of the land in execution, and afterwards received a ſecond writ.

Whether a moiety of a moiety, or the entire remaining moiety ſhall be delivered in Execution.

TWo perſons Recovered ſeverally againſt one in debt, and he who had the firſt Judgement, firſt ſued out an Elegit, and had a Moiety delivered to him; afterwards the other ſued out an Elegit, and the Sheriff prayed the advice of the Court, what return he ſhould make, whether he ſhould deliver the other Moiety of the whole, which was all that remained to the debtor, or but a Moiety of that Moiety, and it was the opinion of the Court, that he ſhould return but the Moiety of that Moiety which was left, but they adviſed the Sheriff to return the ſpecial matter.

Entail Lands not extendible by Stat. *or* Elegit.

Entayled lands in the hands of the Heir, are not extendible neither by Stat. nor Elegit. Sir Jo. Aſhburnham, & Dom. St. John, Cr. Jac. 85. Cox verſ. Barnſly, Hob. 47.

But ancient demean may.

But lands in ancient demean are extendible upon an Elegit. Sir Tho. Cambels caſe, Rolls, tit. Execution, 894.

A Reverſion how it may be extended.

So likewiſe where a man Leaſes for years, rendring Rent, the Reverſion may be extended upon an Elegit, during the Leaſe, and the Tenant by Elegit ſhall have the Moiety of the Rent.

Leaſe for years, how to be extended.

Sale.

Miſtake by the Sheriff.

General Return.

An Inquiſition upon an Elegit found that the Defendant was poſſeſſed of a Leaſe for years, commencing at Michaelmas 2. & 3. P. & M. whereas in rei veritate, it began at Michaelmas 3. & 4. P. & M. and the Sheriff made ſale of it according as the Jury had found it, and the Court held that the ſale was not good, becauſe there was no ſuch Leaſe which the Sheriff had ſold, and there being no ſuch Leaſe, then conſequently the ſale is void; but if the Jury had found that the Defendant was poſſeſſed of ſuch lands, pro termino diverſor. annor. adhuc ventur. and then had appraiſed it, it had been good enough, although there had been no certain beginning nor ending ſet forth, quod Nota. Palmer verſ. Humfryes, Cr. El. 584.

SECT.

SECT. 5.

What the Sheriff muſt do when a *Superſedeas* is ſent to him.

Dy. 98.

A Fieri facias came to the Sheriff, to levy goods, who returned, that he had taken goods in his hands to the value of part of the debt, and that they remained in his hands, pro defectu emptorum, and that before the Return of the Writ, there came a Superſedeas upon a Writ of Error to him, which Writ he Returned annexed to the Fieri facias. It was the opinion of the Court, that notwithſtanding the property was not altered, yet a Venditioni exponas ſhould be awarded.

After goods are taken in Execution (although they are not ſold) a Superſed. comes too late.

Mich. 15. Car. in B. Rs. Marſh 54.

It was agreed by the Court, that the ſhewing of a Writ of Error to the Sheriff, was a ſufficient Superſedeas of the Execution.

The ſhewing of the writ of Error to the Sheriff, is a Superſed. in Law.

Price verſ. Allington, Cr. El. 918.

Fr. 39. El. Goldſ. 96.

In an action of falſe Impriſonment, the Caſe was thus, One Recovers in debt, and had a Ca. Sa. delivered to the Sheriff, who made a Warrant to his Bailiff to do Execution, afterwards and before the Ca. Sa. executed, a Superſed. was delivered to the Sheriff, but the Bailiff having no notice of the Superſed. executed the Ca. Sa. The whole Court were of opinion, that this was not falſe Impriſonment in the Bailiff, he not having notice of the Superſedeas.

A Superſed. comes too late to the Bailiff, if it come after he hath taken the body, although the Sheriff had it before.

Withers verſ. Henly, Bulſtr. 3. Rep. 96, 97. ſee the ſame caſe in Cr. Jac. 97.

If a Capias comes to take the body, and before it is executed, a Superſed. comes, there the Sheriff muſt diſcharge him, but if he is firſt taken, and then a Superſed. comes, then the Sheriff muſt at the Return of his Writ Return the body, together with the Superſedeas.

If a Superſed. comes to the Officer before the Writ executed, it is time enough, but if afterwards, how to Return it.

But if a man is taken in Execution, and the Plaintiff at whoſe ſuit he is taken comes to the Sheriff, and tells him, that he hath releaſed the Priſoner, and therefore he ſhould deliver him out of Priſon, and the Sheriff doth not ſo, but ſtill keeps him, here an action of falſe Impriſonment lies againſt the Sheriff.

A Priſoner in Execution may be diſcharged by Parol. And to keep the Priſoner afterwards is falſe Impriſonment.

Mrs. Bowes caſe, Hetleys Rep. 30.

A Superſedeas was prayed, becauſe the Sheriff by virtue of a Will of Middleſex, had arreſted a man in London, but the Court would not grant it, becauſe a Superſedeas never iſſues out but when a Writ erronice emanavit, but the remedy in this caſe is, to bring an action of falſe Impriſonment.

No Superſed. ſhall be granted where an arreſt is made in London by vertue of a Bill of Middleſex.

King verſ. Hill, Cr. Jac. 43. Yelv. 57.

A Superſed. was delivered to the Sheriff, to ſtay the Return of a Diſtring. at the Aſſizes, which the Sheriff did not obey, but Returned it notwithſtanding, and it was therefore adjudged Error, and the Judgement Reverſed.

Where it is Error to proceed after a Superſed.

As the Sheriff was going to execute an Habere fac. poſſeſſ. there

 came

The Sheriff muſt obey a Superſed. which comes to him before Execution actually executed

came a Superſed. to him, which he refuſed to obey, but delibered poſſeſſion, and thereupon the Court granted an Atrachment againſt the Sheriff, and a Writ of Reſtitution to the party. Thomas verſ. Owen, Bulſtr. 2. part. 194.

SECT. 6.

Where the Sheriff ſhall diſcharge himſelf by returning a *Reſcous*, and where not, and when well returned.

Reſcous is a Return to a Fi. Fa.

THe Sheriff took goods upon a Fi. Fa. and at the Return of the Writ Returned a Reſcous; the Court held the Return to be void, for it is of goods, of which no Reſtue can be. Sheriff of Surry verſ. Adderton, Hetley 145

But upon a mean Proceſs it is a good Return, and the reaſon why.

But upon an arreſt upon a mean Proceſs, where a Reſcous was made, and an Eſcape brought againſt the Sheriff, the Sheriff pleaded the whole matter, and after divers arguments it was adjudged for the Sheriff, for the arreſt being but upon mean Proceſs, and not upon Execution, the Sheriff is not bound to take Poſſe Com. with him, and therefore to ſuch a Proceſs Reſcous is a good Return; but if the Priſoner had been once in the Gaol, the Sheriff ought at his peril to keep him, and a Reſcous from thence is no excuſe for him. So likewiſe if a Priſoner is taken upon a Ca. Sa. or a Cap. Utlagat. after Judgment, then Reſcous is no Return, for the Sheriff at his peril ought to keep his Priſoners in Execution. May verſ. Proby, & al. Cr. Jac. 419. & Hodges, & Marks, Cr. Jac. 485, 486. but Waldow verſ. Lambert in Cr. El. è contra.

But not upon a Ca. Sa. or Cap. Utlagat.

A Reſcous Returned with a ſimul cum, void Reſcuſſerunt.

If the Sheriff Return a Reſcous that J. S. ſimul cum B. reſcuſſerunt D. out of his cuſtody, this is no good Return againſt B. becauſe this is not any aberment that B. reſcued him, neither is it any good Return againſt J. S. becauſe it is reſcuſſerunt, in the plural number, which is inſenſible. M. 14. Car. B. Reg. Rolls, tit. Return, 457.

The Sheriff ſhould return the place where the Reſcous was made.

The Return muſt likewiſe be certain, and therefore where a Reſcous was returned, and no place mentioned where the Reſcous was made, it was adjudged void for Non conſtat to the Court, whether the arreſt and the Reſcous were within the County and Juriſdiction of the Sheriff. Wolfreſtous caſe, Yelv. Rep. 51. for Dy. 69.

It ought to be certain. Reſcous upon a Bailiff how to be Returned. Warrant.

So alſo where the Sheriff Returned a Reſcous upon A. B. cui fecit warrantum, but the Sheriff did not averr that A. B. was his Bailiff. 2. He did not ſay for what cauſe he made his warrant, ſo that it appears not whether it was lawfull or not, and for theſe reaſons it was quaſhed. M. 49. Styles 155.

Upon a Bailiff how to be Returned.

The Sheriff Returned a Reſcous by A. and B. upon his Bailiff to whom he directed his warrant to execute his Writ, and it was moved that the Return was inſufficient, becauſe it doth not appear that the Bailiff had Returna brevium, which ought always to be mentioned upon the Sheriffs Return, and all the Court were of the ſame opinion, if the Sheriff had Returned it as the Return of the Bailiff of the liberty, Lady Ruſſel & Woods caſe, Cr. El. 780, 781. Styles 417. acc.

ty, but he Returned it in his own name, wherefore it ſhall be intended his own Bailiff, and ſo good.

Kent verſ. Elwis, Cr. Jac. 241, 242.

An action was brought for reſcuing one J. S. from the Deputy of the Bailiff of a liberty, and it was moved that it was not good, becauſe it ought to have been alledged, that he was reſcued from the Bailiff himſelf, or from the Sheriff, ſed non allocat. for there is a difference between an action upon the Caſe, where the Plaintiff muſt ſhew the truth of his Caſe, as in rei veritate it is, and the Return of a Reſcous, or an Indictment for Reſcous, for there it muſt be ſaid, that it was either to the Bailiff himſelf, or Sheriff himſelf.

Return, that Reſcous *was made from the Bailiffs Deputy, not good.*

Hodges verſ. Marks, & al. Cr. Jac. 485, 486.

Alſo where a Warrant was directed to two perſons, which were not known Bailiffs, and they in January about ſix of the clock in the evening, entred the houſe where the Defendant was, (the doꝛ being open) and one of them having the Warrant in his pocket, and ſeeing the Defendant, ſaid theſe wordꝭ to him, I do arreſt you by virtue of a Warrant that I have, but he did not ſhew his Warrant, nor had it in his hand, nor told him at whoſe ſuit it was, and thereupon the Defendant was reſcued, Et ſi, &c. And it was reſolved, 1. That this arreſt without ſhewing the Warrant, and without telling at whoſe ſuit, untill the other demanded it, was legal. 2. That he need not ſhew the Warrant, untill the other obeyed and demanded it. 3. This arreſt being at ſix of the clock at night, the doꝛ being open, was good enough. 4. It was held that for this Reſcous the action was well maintainable againſt the Defendant by the Plaintiff, for he hath loſs, and cannot have his action againſt the Sheriff.

Arreſt at ſix of the clock at night in January.

Warrant not ſhewn.

Reſcous.

When he need not ſhew his Warrant.

May verſ. Proby, Cr. Jac. 419. accord.

Action upon the caſe lyes for a Reſcous.

CAP. IV.

Of Retorns in general.

SECT. 1.

Who are to Retorn Writs.

Where Coroners.

SEveral other persons have the retorning of Writs, as well as Sheriffs; as in cases of Challenges, &c. Writs are directed to the Corroners, and to be retorned by them; but then that must appear upon Record, which if it doth not, it is Error, and not remedied by the Statute of Jeofailes. Goodwin & Franklins case, Vouch in the 5 R. 37. Baynhams case, 32. H. 8. 18 Eliz.

Where Bailiffs of Liberties.

If removed from their Office, the Retorn void.

A warrant to two Bailiffs, retorned by one of them, good.

But not so, where there are two Sheriffs.

Where a Warrant is directed to the Bailiffs, &c. of such a Liberty, to make Executions, and afterwards, and before the execution thereof, they are removed from their Office, and afterwards they retorn it, this Retorn is absolutely void: But if a warrant is directed to two Bailiffs of a Franchise to execute it, and one of them executes it, the Retorn of the one in the name of both of them is good enough; but if one Sheriff of London makes his Retorn without his fellow, this is no Retorn at all, and cannot be holpen by the Statute of Jeofailes, because the Court knows, that one Sheriff there, is two persons. Palmer verf. Porter, Cr. El. 512. Palmer verf. Marsh, Tr. 39 El. Rolls tit. Retorn, 458. Lamb verf. Wiseman, Hob. Rep. 70.

Retorn by two Coroners, where there were four, is Error.

But help'd by the Statute of Jeofailes.

But where a Ven. fac. was retorned by two Corroners, and the Distringas by three, whereas at the time of the awarding of the Ven. fac. and Retorn thereof, there were four Corroners; it was agreed by the Court, that this was Error at the Common Law, for Corroners as Ministers ought all of them to joyn, but as Judges they need not; but now this imperfection is aided by the Statute of Jeofailes. Hob. 70.

The Sheriff must endorse his name to all Retorns, or else it is Error.

Distring.

Ven. fac.

and all judicial Proces.

Where the Sheriff or other Officer retorns a Writ, he ought alwayes to endorse his name on the Writ, otherwise it is an incurable Error, and it hath been so adjudged, (although it hath been objected, that in case of a Distringas or Ven. fac. which are Judicial Processes, it might be amended) for as the Court there observed, the Sheriffs name not being to it, it is no Retorn. Holdsworth verf. Procter, Cr. Jac. 188. 5 R. 41. M. 36 El. in B. R. 5 R. in Rowlands case.

A Retorn by one who hath no authority to make it, is void.

Album breve.

So likewise, where the Writ is retorned by one who hath no authority to do it, it is the same as if it were retorned Album breve. Bethyll verf. Parry, Cr. Car. 136, 137.

Qu. Impedit.

Upon a Quare Impedit against the Bishop of R. who pleaded, that he claimed but as Ordinary, and that the Clerk which the Plaintiff presented Booten verf. Episc. Roffen. Hutton 24.

preſented had before contracted with the Plaintiff Symoniacally, and therefore he refuſed him, and that the Church was then void, and ſo remained void; whereupon the Plaintiff had a Writ to the Archbiſhop of Cant. who retorned, that before the coming of this Writ, the Church was full, viz. one D. ex collatione of the Defendant; it was holden by the Court, that this Retorn was inſufficient, for it is clear, although the ſix months paſs, yet if the Patron preſent, the Biſhop ought to admit, although it be after the title devolved to the Metropolitan; and in this caſe the Biſhop (who is the Defendant) is bound by the Judgement, and the Writ is, that notwithſtanding the claim of the Biſhop, he admit his Clerk, for the Biſhop is but a Servant, and ought to execute the Proceſs of the Court.

Breve Archiepiſcopo.

Inſufficient Retorn.

Biſhop is but a Servant to the Court, as to ſuch matters.

Boſwells caſe, 6 R. 52.

Alſo in a Quare Impedit, although it be found ex officio, that the Church was full of B. who was a ſtranger to the Writ, and it doth not appear whether he came in by better title than the Plaintiff had, yet the Plaintiff ought to have a general Writ to the Biſhop, and the Biſhop cannot retorn upon it, that the Church is full of another, for no iſſue can be joyned between the Plaintiff and him, for he hath no day in Court.

Qu. Impedit.

Breve Epiſc.

He cannot Retorn plenarly.

Lancelot verſ. Johns, Cr. El. 50.

In Debt againſt two perſons the Sheriff retorned, quod non habuit bona aut catalla quod ſummoniri poſſint, whereas it ſhould have been, per quod ſummoniri, &c. 2. it ought to be, ne eorum aliquis habet, and for theſe Errors the Judgement was reverſed.

Quod ſummoniri poſſint, *for* per quod ſummoniri poſſint, *naught againſt two, and doth not ſay,* nec eorum aliquis.

Allen verſ. Walter, Brownlow, 1 part. 127. Hob. Rep. the ſame caſe.

In Dower the Sheriff retorned, pleg. de proſ. J. D. & R. R. and the names of the Summoners, and that after the Summons made, and by the ſpace of 14. dayes and more before the Retorn of the Writ, at the moſt uſual Church-doors of M. magna, where part of the Tenements lay, upon the 27th. of Octob. being the Lords-day, immediately after Divine Service, he publickly proclaimed all and ſingular the things contained in the Writ to be proclaimed, according to the form of the Statute: Exception was taken hereto, Firſt, becauſe the Proclamation was not made at the Church-doors where the land lay, the land lying in two Pariſhes; the Court was of opinion, that making Proclamation at any of the doors of any of the Churches, was ſufficient; but becauſe he retorned, that he had proclaimed all and ſingular in the Writ contained, becauſe he did not expreſs what, for this very cauſe the Retorn was held to be too general and inſufficient.

Dower.

Summoners.

14 dayes.

At the Church-door.

Proclamation.

Proclamation where to be made, when the land lies in two Pariſhes.

General Retorn void.

Thyn verſ. Thyn, Styles 67.

In Dower after a Judgement by default, and a Writ of Enquiry iſſued out, and ſeiſin delivered, and Judgement thereupon, Error was brought and aſſigned; Firſt, That the Original Writ appears not to be retorned according to the Statute, for the year doth not appear when it was retorned. 2ly. The Proclamation made by the Sheriff doth not appear to be where the land lay. 3ly. The Retorn doth not mention, that the Proclamation was after the Summons, as it ought to be, as it is in Allens caſe in Hob. 4ly. It is not ſaid, that he did make Proclamation upon the land. 5ly. It appears not, that the Proclamation was in the Pariſh where the Summons was made, as the Statute directs.

Dower.

Enquiry.

Proclamation where to be made.

Allen verſ. Walter, Hob. 133.

To theſe it was anſwered by the Counſel:

1. That

The Objections anſwered.

1. That the Retorn of the Original ſhall be intended to be in the year of the Reign, and not of the age of the King, though the word Reign be omitted.

Where lands lye in divers Pariſhes.

2. The lands lying in divers Pariſhes, Proclamation being made at the Church-door of any of the Pariſhes, is good enough.

3. To the third; the Proclamation is ſaid to be made, prout breve poſtulat, and that ſhall be ſuppoſed duely done, and implies all requiſite circumſtances, and he cannot make another Retorn, and it is impoſſible to be otherwiſe.

4. To the fourth; it is not neceſſary to Retorn the place of the Suntmons, it being retorned that it was made, ſecundum formam ſtatuti, ſupplies the reſt. It was afterwards in fo. 77. argued again and adjorned. Styles 77.

But the Writ of Error was afterwards diſcontinued, for a defect in the Certificate of the Summons, ſo that theſe points were not reſolved. Yet they may ſerve to warn a carefull Sheriff how to avoid the like Queſtions. Styles 143.

Dower.

So likewiſe in a Writ of Error, to reverſe a Judgement given in a Writ of Dower, this exception was taken. Fairfax verſ. Fairfax, Styles 236.

No Proclamation of the Summons retorned.

1. That the Original was not well retorned, for there appears not to be any Retorn of the Proclamation of the Summons; and though the party appear, yet it was ſaid, it is not helped thereby.

Summons is only to make the party appear.

As to this exception Rolls Chief Juſtice anſwered, that the not retorning the Proclamation of Summons, is not material; for the Summons is only to make the party appear, and he hath appeared in this caſe; likewiſe the Statute extends to it, if it were not good without it.

The Sheriff upon a Lat. retorned, that before the Retorn of the Lat. he was delivered by Hab. Corp.

Upon a Latitat, the Sheriff retorned, that he virtute inde had arreſted the Defendant, and that tali die, afterwards and before the Retorn thereof, a Habeas Corpus came to him to bring the body immediately into Chancery, which was done accordingly; and the Priſoner was there diſcharged by the order of the ſaid Court; and this was held a good Retorn, for the Sheriff is bound to obey the Kings Writs, and to execute them. The truth of the caſe was, the party was brought before the Maſter of the Rolls, and he diſcharged him; Et per Cur. this is a very ill act of the Maſter of the Rolls. Leonard. 1 pt. 145. Cary verſ. Davis.

Per Maſter of the Rolls.

To retorn that the Lat. was retornable upon a day which is not dies Juridicus, no good Retorn. Eſcape. Wherefore the party was retaken.

A Latitat was directed to the Sheriff of London, to take the body of J. S. the Writ was retornable die Jovis, &c. which was All-Saints day; the Sheriff took the party, and retorned, that becauſe the Writ was retornable upon a day which was not dies Juridicus, he ſuffered the party to go at large: It was holden by the Court, that the Retorn was inſufficient, for the Writ was good, and the detaining of the party by vertue thereof was lawfull, although he could not have the party there at the ſaid day, wherefore the Sheriff was compelled to bring the party into Court, which afterwards he did accordingly. Poph. 205.

In

Golſon verſ. Bennet, H 7. Jac. Rolls, tit. Retorn 459.

In an action of debt againſt the heir, if the Defendant pleads that nothing diſcended to him but one houſe in D. and thereupon Judgement is given for the Plaintiff, & quia ignorat. of what value the houſe was, there iſſued out a Writ to the Sheriff, to enquire of the value, and alſo to make Execution, the Sheriff hereupon Retorned, that it was ſold by the Defendant before the Writ came to him, and adjudged no Retorn, becauſe it doth not ſtand with the Judgement; but in an action of debt againſt an Executor, the Defendant confeſſeth the action, whereupon a Fi. Fa. iſſued out, here the Sheriff may retorn a nulla bona, for this well ſtands with the Judgement, becauſe he confeſſeth only the action, not that he hath goods.

The heir pleads Riens per diſcent *prætet. writ of Enquiry. Retorn. Repugnancy.*

Newman verſ. Babington, M. 8. Jac. B. Reg. Rolls, tit. Retorn 459.

Fi. fa. againſt an Executor, where he confeſſeth the action, nulla bona, is a good Retorn.

Doily verſ. White, Bulſtr. 2. part, 80.

A Warrant upon a Ca. Sa. iſſued out againſt a woman which was then a ſeme ſole, but at the time of the arreſt ſhe is married, it is no Retorn for the Sheriff to ſay that ſhe was married, or Non eſt in venta, but he muſt take her notwithſtanding, for otherwiſe he would take upon him to falſifie all the proceedings which have been before; but if a Capias iſſues out againſt a feme ſole, and before ſhe is thereupon taken ſhe marries, here if ſhe be taken upon this Proceſs, falſe Impriſonment well lies, and the Sheriff may well Retorn Non eſt inventa, the diverſity is apparent, quod nota.

A Feme ſole is ſued to a Judgement, and after Execution taken out, ſhe marries, yet ſhe may be taken as a Feme ſole. *But è contra in caſe of a mean Proceſs.*

Upon verſ. Wells, Leon. 1. R. 142.

Upon an Habere fac. poſſeſſionem, the Sheriff Retorned, that in the execution thereof he took the Plaintiff with him, and came to the houſe recovered, and removed thereout an old woman and two children, which were all the perſons which upon diligent ſearch he could find in the houſe, and delivered to the Plaintiff peaceable poſſeſſion to his thinking, and afterwards departed, and immediately afterwards, three other perſons which were ſecretly lodged in the houſe, expulſed the Plaintiff again, upon notice of which he returned again to the houſe to put the Plaintiff in full poſſeſſion, but the others did reſiſt him, ſo as without peril of his life he could not do it; and upon this Retorn, the Court awarded a new Execution, becauſe the firſt Writ was not executed, and alſo awarded an Attachment againſt the parties.

upon a Writ of poſſeſſion, and after poſſeſſion delivered. Diſturbance by others which were hid in the houſe. Sheriff returned that he could not expell the force, wherefore New Execution and Attachment againſt the parties.

Floyd verſ. Bethill, P. 15 Jac. B. Reg. Rolls, tit. Retorn 459.

Upon an Habere fac. poſſeſſ. the Sheriff Retorns that he was always ready to deliver poſſeſſion, and appointed divers times for the Plaintiff to come and receive poſſeſſion from him, at which times he was there ready to deliver him poſſeſſion, but no body came on the Plaintiffs behalf to receive it, and this was adjudged a good Retorn.

upon a Writ of poſſeſſion, the Sheriff Retorns, that he was always ready to deliver poſſeſſion, and that the Plaintiff never came to receive it.

Dy. 11. El. 278

Alſo upon an Habere fac. Seiſinam in Dower, the Sheriff Retorned, that he offered her ſeiſin of the third part, and ſhewed to the Court what made the third part, by meares and bounds in certain, according to the tenour of the Writ, and ſhe refuſed to receive them of him, and it was the opinion of the Court hereupon, (notwithſtanding the exceptions made to the incertainty of the Retorn) that it was a good Retorn, and the Court refuſed to award an Habere fac. ſeiſinam de novo, for that, they ſaid, would be a new preſident, the like whereof hath not been ſeen.

upon an Habere fac. ſeiſinam *in Dower, the Sheriff Retorns an Offer and Refuſal.* Quod quer. non eſt proſecut. bre. &c. *no Retorn.*

Floyd verſ. Bethill, P. 15. Jac. Rolls, tit. Retorn 460.

Upon an Habere fac. ſeiſinam, the Sheriff Retorned, that the party who ought to take the ſeiſin, Non eſt proſecutus bre. the Court was

was divided whether this Retorn were good or no, but the better opinion seemed to be, that the Retorn is void, for the uncertain intendment thereof.

An Inquisition taken the same day on which it was retornable, good.

The Sheriff took an Inquisition upon the same day on which the Writ was Retornable, and yet it was held a good Retorn, but they held if it had been taken the next day after, and before the quarto die post, that it had been void. Bugberds case, Cr. El. 180.

An Inquisition upon an Elegit taken by the Bailiff of a Liberty, and good.

The Sheriff sends his Warrant to a Bailiff of a Liberty, to make an Inquisition, and an Extent upon an Elegit, who doth it accordingly, and it was adjudged that it was well made by the Bailiff, and it was likewise adjudged that the Jury shall extend the land, and the Bailiff or Sheriff (where no liberty is) shall deliver the moieties, and not the Jury. Sparrow verf. Mattersock, Cr. Car. 319.

Extendi facias. Seisure. Bre. de Prerog Regis.

Upon an Extendi fac. upon a Stat. Staple out of the Chancery, the Sheriff extended the lands of the Defendant, and he prized the goods, and seized them into the Kings hands, but did not deliver them; afterwards a Writ de Prerogativa Regis, came to the Sheriff, commanding him to leavy 100 l. &c. which Writ was delivered to him after the day of the Retorn of the first Writ, but the first Writ was not then Retorned, and thereupon the Sheriff retorned the whole matter into the Exchequer, and he was amerced by the Court for making this Retorn, and was forced to execute the Writ de Prerogativa, for till a Liberate no property is in the Conusee, but they had been priviledged from all other Executions, but this of the King. Stringfellowes case, Dy. 3. E. 6. 67.

Special Return, until a Liberate, there is no property in the Conusee.

Sci. fa. verf. execut. & hered.

He Returns that there are no Executors, but Returns an heir.

But he did not Return him heir of any land.

A Sci. fac. was sued out at the Kings suit against Executores testamenti, & ultim. volunt. prædict. M. & hered. terrarum & tenementorum, &c. At the day of the Retorn the Sheriff Retorned that the said M. had no Executors, but that Scire fecit W. H. Mil. fil. & hered. dicti M. quod sit, &c. And upon a Writ of Error brought, it was assigned for Error, that the Retorn was not good, because the Sheriff did not retorn him heir of any Lands or Tenements, but generally that he had summoned the heir of M. This point was not resolved, the cause being compounded. Herberts case, 3. Rep. 15.

Sci. fa. upon a Recog. verf. hered. & Terr-tenentes.

He retorned as to the Terr-Tenants, but nothing as to the heir.

Void Return.

Stat. Jeofailes doth not help it.

Upon a Sci. fa. upon a Recognizance in Chancery against C. the Defendant was retorned dead, whereupon a second Sci. fa. issued out against the heir, and Terr-tenants of the land of C. which he had tempore Recogn. vel postea, whereupon the Sheriff retorned the Terr-tenant of such lands, &c. but omitted to retorn any thing concerning the heir; and three Judges were of opinion, that this Retorn was void, because the Plaintiff names and sets forth that there is an heir, and there is no Retorn quoad the heir, so as to him it is, Quasi album breve, and no Retorn; neither is it aided by the Statute of Jeofailes, for that Statute helps only insufficient Retorns and mis-Retorns, but where it is album breve, it is no Retorn, and so out of the Statute. Eyres verf. Taunton, C. Car. 295, 296. 312, 313. See before in this Chapter.

It is no plea against the Retorn of the Sheriff, to say that he was not Tenant.

Upon a Sci. Fa. against the Terr-tenants, upon a Judgement in debt, the Sheriff retorns quod Scire fecit J. B. Tenenti unius Messuagij, &c. and hereupon comes J. B. and pleads that he is not Tenant against the Retorn of the Sheriff, and it was thereupon demurred, and adjudged to be no plea. Flud verf. Penington, Cr. El. 872.

A Writ

Dyer 73 a. Quære, but in 1 Inſtit. 171. Reſolved. 32 H. 8.

Partition.

A Writ of Partition was brought upon the Statute of 32 H. 8. the Defendant confeſſed the Partition, and a Writ awarded to the Sheriff, quod partitio fiat; the Sheriff retorned the Partition by 12. men: One of the parties ſurmiſed an inequality in the Partition, and prayed a new Writ, but afterwards reſolved, that the firſt Partition being made by Writ, ſhall ſtand good.

Inequality ſurmiſed.

Bagnall verſ. Harvy, Godbolt 265.

Partition.

In a Writ of Partition, it was found for the Plaintiff, and a Writ awarded to the Sheriff, that he ſhould make Partition; and the Sheriff did thereupon allot part of the lands in ſeveralty, and for the other part, that the Jurors would not aſſiſt him to make the Partition; upon this Retorn an Attachment was prayed againſt the Jurors, and a new Writ prayed to the Sheriff; but the Court doubted what to do in it, and took time to adviſe.

He retorns, that as to part the Jurors would not aſſiſt him.

Bathells caſe, Cr. Car. 570.

Retorn by the name of nuper Vic.

A Venire fac. was retorned, per T. H. Mil. nuper Vic. Com. præd. whereupon it was alledged to be Error, it appearing to be retorned by one who was nuper Vic. Sed non allocatur; for although the Writ be retorned by J. S. the Sheriff, at the time of the Grand Seſſions, when the action was tryed, as a Writ delivered to him by T. H. his predeceſſor, in exitu ab officio, with this Retorn endorſed; yet it might be well intended, that the Panel was made and annexed in the time when he was Sheriff.

Bethyll verſ. Parry, Cr. Car. 189.

Another Retorn by the name of nuper Vic.

Likewiſe where a Venire was retorned in this manner; per T. R. Vic. iſtud breve cum panello annexato mihi deliberat. fuit per T. H. Mil. nuper Vic. in exitu ab officio ſuo, & ſic indorſat. T. H. Mil. nuper Vic. and it was moved, that it being retorned by the name of nuper Vic. it was no more than if it had not been retorned at all, for a void Retorn, is as no Retorn; but the Court over-ruled this exception upon the reading of the Record. See the caſe at large.

Stubbs verſ. Rightwiſe, Cr. El. 102.

Upon a Demurrer by an Executor, the Sheriff cannot to a Fi. fa. *retorn a* nulla bona, *but a* Devaſtavit.

Per Curiam; If Judgement be given againſt an Executor upon a Demurrer, and Execution awarded, the Sheriff cannot retorn, nulla habet bona Teſtatoris, but is to retorn a Devaſtavit, as if it had been found againſt the Executor by verdict, becauſe he hath charged himſelf by his own plea.

Rolls tit. Retorn, 459.

But here nulla bona *is good.*

But where the Defendant confeſſeth the action, there the Sheriff may retorn a nulla bona, for this ſtands well with the Judgement.

Rolls tit. Retorn, 460.

Likewiſe quod nulla bona &c. prout conſtare poterit, *is no Retorn.*

Upon a Fi. fa. againſt an Executor, the Sheriff retorns, quod nulla habet bona Teſtat. in Balliva ſua, prout conſtare poterit; and this was held a void Retorn, becauſe the Sheriff at his peril ought to take notice whether he hath Goods or no.

Paſ. 7 E. 6. Bendlows 23.

After a verdict upon plene adminiſtravit, *and* Fi. fa. *thereupon,* nulla bona *is a good Retorn.*

Aſſets in a Foreign County.

In Debt againſt Executors, they pleaded, plene adminiſtravit; it was found they had Aſſets, &c. And afterwards there went out a Fi. fa. to the Sheriff, who retorned, that they had not any thing within the County; and it was holden a good retorn, becauſe it might be, that the Jury found Aſſets in another County, as they might well do if they will take notice of it, and yet this verdict ſhall not bind the Sheriff.

No averment against the Retorn of the Sheriff.

Although a man cannot averr against the Retorn of the Sheriff, yet he may say, that he who hath endorsed his name on the backside of the Writ was not Sheriff, because by the Common Law, untill the Statute of E. 2. no Sheriff nor Officer used to put their names to their Retorns; and therefore this averment, that he which made the Retorn is no true Officer, is not taken away by the Statute, but remains at the Common Law. Arundel verſ. Arundel, Plo. 33, 34. vide Cr. Jac. 11, 12. E. 2.

Averment, challenge to the Array, because he that made the panel was not Sheriff.

After issue joyned, and the Jury appeared, the Defendant challenged the Array ore tenus, because it was retorned by J. S. two dayes after he had received his Writ of discharge; and the Court held, that he could not challenge it for that cause, because it would be a direct averment against the Record, for it is retorned by him as Sheriff, and the Retorn accepted; but the Court adviled him to make his Challenge to the Array, because it was made in favour of the party: And issue being thereupon joyned, all this matter was given in evidence, the Court thereupon directed the Tryers, that it was not duly made and retorned, for it was without warrant, wherupon the Array was quashed. Hore verſ. Broome, Cr. El. 369.

Error brought for Non-summons at the Church-door.

The Sheriff retorned a summons. Averment.

Upon a Writ of Error brought it was assigned for Error, that the Defendant was not summoned at the Church-door, according to the Statute of 31 El. cap. 3. and that by reason of his default a grand Cape was awarded, and Judgement given against him, and so he lost his land by default, and in truth the Sheriff retorned him summoned at the Church-door: And it was thereupon demurred, whether he should have this averment or no, or should be put only to have his action on the Case against the Sheriff; Gawdy Justice was of opinion, that it was Error, and might well be assigned, but all the other Justices è contra, for at the Common Law if the Sheriff had retorned the party summoned, where he was not, and thereupon a grand Cape was awarded, there was not any remedy but a Writ of Disceit, for the Judges ought to credit the Officers, and it is not any Error in them to award a grand Cape: So here, for as much as it is of Record before them, that the party was summoned according to the Statute, they are bound to award a grand Cape; and it is not Error, and this Statute doth not intend to give other remedy than was at the Common Law for the Tenant; but Popham Chief Justice conceived, that the party might have a Writ of Disceit, if the Proclamation of Summons was not made according to the Statute, because he is not summoned according to Law; but Gawdy and Clench Justices, è contra, because it is a good summons by the Summoners upon the land. Collet verſ. Marsh, Cr. El. 371. & 367, 368. 31 El. cap. 3. Cr. El. 367, 368. Goldſborough, 128.

No remedy but a Writ of Disceit.

Exposition of the Statute of 31 Eliz. cap. 3.

Disceit lyes for not making Proclamation according to the Statute.

The Sheriff cannot retorn, that the Warrant came adeo tarde, &c. to his Bailiff, &c.

If the Sheriff retorn, feci retornum istius brevis G. & L. Ballivis Libertat. G. qui habent retornum brevium & executionem eorundem, qui mihi respond. quod adeo tarde receperunt, per manus Attorn. querentis, quod nihil inde facere potuerunt; this is held to be no Retorn, for when he sayes that he retorned the Writ to the Bailiffs, it is thereby intended, that it was time enough, for he ought to see that it be delivered to the Bailiff in convenient time, so that the Sheriff hath accepted the answer of the Bailiff contrary to his own Retorn, and therefore it is his default. Rolls tit. Retorn, 461.

What Executions are well executed, although they are never Retorned.

Nota, Although the words of a Ca. Sa. are conditional, ita quod habeas corpus ejus, &c. yet the execution thereof is good although the Writ Fulwoods case, 4 R. 6, 7.

Writ were never retorned; so likewise of a Fi. Fa. or habere facias poſſeſſionem, and generally of all other Writs of Execution, which are the final Proceſs, and after which no Judgement is to be given: But in case of an Elegit, where an Inquiſition is to be taken, it is otherwiſe, for there the Writ ought to be retorned, to the end that the Court may adjudge upon the ſufficiency or inſufficiency of the Inquiſition.

What Executions are of no effect, untill they are retorned.

SECT. 2.

What the Sheriff muſt do upon a Writ *de Ventre inſpiciendo.*

Lady Willoughby's caſe, Cr. Eliz. fo. 566.

THis Writ is granted out of the Chancery, commanding the Sheriff, that he cauſe the party to be viewed by twelve Knights, and ſearched by twelve Women, in the preſence of the twelve Knights, & ad tractandum per ubera & ventrem inſpiciend. whether ſhe were with Childe, and to certifie the ſame unto the Common Bench; and if ſhe were with Childe, to certifie for how long time in their Judgements, & quando ſit partura: Whereupon the Sheriff cauſed her to be ſearched, and retorned, that ſhe was twenty weeks gone with Childe, and that within twenty weeks ſuit partura: whereupon another Writ iſſued out of the Common Bench, commanding the Sheriff ſafely to keep her in ſuch an houſe, and that the doors ſhould be well guarded, and that every day he ſhould cauſe her to be viewed by ſome of the Women named in the Writ, (wherein ten were named) and when ſhe ſhould be delivered, that ſome of them ſhould be with her to view her Birth, whether it be Male or Female, to the intent there ſhould not be any falſity; and upon this Writ the Sheriff retorned, that accordingly he had cauſed her to be kept, &c. and that ſuch a day, &c. ſhe was delivered of a Daughter.

The ſubſtance of the Writ de Ventre inſpiciend.

The Retorn thereunto.

The form of the Writ, ad eam ſalvo cuſtodiend. quouſque, &c.

She muſt be viewed by women.

The Retorn hereunto.

Theakers caſe, Cr. Jac. fo. 686.

So likewiſe the like Writ was afterwards directed to the Sheriffs of London, to cauſe one M. to be ſearched, whether ſhe were with Childe by her deceaſed Husband, & quando ſuit partura, (no mention being made of her ſecond Marriage) and this Writ was according to the preſident in the 39 Eliz. of the like Writ againſt the ſaid Lady Willoughby; and this Writ was retornable in the Common Bench: The Sheriff retorned the Inquiſition, that by ſuch perſons he cauſed her to be ſearched, and found her to be enſeint, & quod ſuit partura within twenty weeks: wherefore he now prayed a ſecond Writ out of this Court, to be directed to the Sheriff of Surrey, becauſe ſhe was removed with her Husband to W. in Surrey, and there inhabited, that the Sheriff might take her into his cuſtody, and keep her untill ſhe were delivered of her Childe, that there might not appear to be any falſe or ſuppoſititious Birth; and that in the interim he ſhould cauſe her to be viewed every day by certain Matrons, named by the Court in the Writ, and that ſome of them ſhould be at the

The like Writ de Ventre inſpiciend. *but here the woman was married to a ſecond Husband.*

The Sheriff's Retorn to it. Inquiſition.

Court wou'd not grant a writ, to remove her from her Husband.

Birth of the Childe, according to the ſaid preſident of the Lady Willoughby: But becauſe in that caſe the Lady was a Widdow, and ſo ſuch a courſe might well be obſerved; but here ſhe is a Feme-Covert, who ought to cohabit with her Husband, they would not take ſuch a courſe with her, but left her with her Husband, he entering into a Recogniſance, that ſhe ſhould not remove from the houſe wherein they then inhabited, and that one or two of the women retorned by the Sheriff, ſhould ſée her every day, and that two or three of them ſhould be preſent at her travail; for it was ſaid, that this iſſue might well be ſaid to be the Childe of the firſt Husband, and ſhould inherit his land, ſo as if there were any falſe or ſuppoſititious Birth, the Coſin and Heir might be diſinherited: wherefore a Writ was accordingly awarded to the Sheriff of Surrey, to cauſe her to be ſéen every day untill her delivery, by two at leaſt of the ſaid women retorned by him, and that three of them or more ſhould be preſent with her at her delivery, ſo as no falſhood might be in her Birth.

The Husband enters into a Recogniſance, that ſhe ſhall not remove from his houſe.

Another Writ was awarded, to cauſe her to be viewed every day by Matrons.

Note, after this courſe obſerved, ſhe was delivered of a Female childe, who was afterwards by Inquiſition, found to be the Daughter and Heir of the ſaid William Theaker deceaſed.

SECT. 3.

The Sheriff directed what to do in retorning Writs touching multitudes throwing down Fences and Ditches, &c.

A Writ iſſued out of the Chancery, dat. 13 Martii 7 Car. to the Sheriff of Glouc. commanding him per Sacramentum proborum & legalium hominum de Com. prædict. to enquire Qui malifactores, & pacis Domini Regis perturbatores, apud Foreſtam de *Deane* ſepes & foſſata *Johannis Gibbons*, ibidem per ipſum nuper levat. noctanter, aut tali tempore quo factum eorum ſcire non credebant, proſternaverunt, to the damage of the ſaid *John*, & contra pacem: Et ſi prædictus *Johannes* fecerit te ſecurum de clamore ſuo proſequendo, tunc pone per vadios & ſalvos plegios, omnes illos quos culpabiles ibidem inveniris, quod ſint coram nobis in quindena Paſchæ, ubicunque, &c. ad reſpondendum tam nobis de pace fracta, quam prædicto *Johanni* de tranſgreſſione, &c. The Sheriff ad quindena Paſchæ retorned the Inquiſition; Quod virtute brevis prædict. ad inquirendum (reciting the Writ) per Sacramentum 12. &c. qui dicunt ſuper Sacramentum ſuum, quod quidam malifactores, & pacis Regis perturbatores, vi & armis ſepes (viz.) 769. particarum ſepium & foſſarum ipſium *Johannem Gibbons*, apud Foreſtam de *Deane*, nuper ante per ipſum levat. proſternaverunt; ſed qui; aliquam partem inde proſtraverunt Juratores prædicti ignorant: Et ſimiliter dicunt, quod vi armata & cum multitudine gentium, malifactores & pacis perturbatores prædicti fuerunt: Ita quod nullus

Mich. 8 Car. in B. R. Cr. Car. 280, 281.

The form of a Writ deviſed by Noy *Attorney-General, againſt thoſe which in multitudes throw down Hedges and Ditches, &c.*

The Retorn thereof by Inquiſition.

nullus ad ipſos appropinquare ad ipſos cognoſcend. auſus fuit, & tali tempore quo factum eorum ſciri non credebant, ſepes & foſſata prædicta proſtraverunt & redierunt: And hereupon a Writ of Diſtringas iſſued, reciting the firſt Writ and the Inquiſition thereupon retorned, commanding the Sheriff of *Glouceſter*, quod diſtringat propinquas villatas ſepibus & foſſatis prædictis circumadjacent. prædictas ſepes & foſſata proſtrata levare ad cuſtos ſuos proprios: And by the ſame Writ it was commanded, to enquire quæ damna prædictus *Johannes Gibbons* ſuſtinuit, and to retorn the Writ and Inquiſition in octab. Trin. Hereupon the Sheriff certified, Quod villa de *Brettills*, & viginti aliæ villæ, (naming them) in the County of *Glouceſter*, ſunt propinqua villata ſepibus & foſſatis inframentionatis circumadjacentes; and further certified, quod damnum in quadam Inquiſitione brevi annexat. eidem *Johanni Gibbons* propter brevitatem temporis reſtituere non poteſt, and retorned Iſſues upon every of the ſaid Villages, and that the reſidue of the execution of the Writ appeared, in quadam Inquiſitione eidem brevi annexat, and retorned the Inquiſition, whereby was found that the ſaid *John Gibbons* ſuſtinuit damnum occaſione præmiſſorum ad 200 l. And upon this retorn Brampſton Serjeant took divers Exceptions: Firſt, for the Foreſt of Deane, there is not any Pariſh named wherein it lyes; ſed non allocatur, for a Foreſt is certain enough of it ſelf. Secondly, becauſe this Writ is founded upon the Statute of Weſtm. 2. cap. 46. That if the Lord hath right to improve any of his Waſte, *&c.* and his Hedges be deſtroyed *noctanter*, and it cannot be known by the verdict of the Aſſize or Jury, who thoſe Malefactors were, the Towns next adjoyning ſhall be diſtrained to levy the Hedge or Dyke at their own coſts, and to yield damages. And he doth not ſhew here, that he is Lord of the Waſte, and hath right to improve it: But Noy the Kings Attorney, who deviſed this Writ, ſaid, that it ſufficeth in a Writ, to ſhew the grief breviter, and if there be not any ſuch perſon as may incloſe, it ought to be ſhewn on the other ſide. Thirdly, it was objected, that this incloſure is not ſhewn to be with the Kings licenſe, and then it is without warrant: But hereto was anſwered, That it ought to come in by plea after appearance, and not by way of exception: It was alſo moved by Noy, that they had no day in Court, becauſe the Writ and the Inquiſition were retorned the laſt Term, and they then not appearing and pleading, they ſhall not be received to come in by way of exception in this manner: And he ſhewed a Record, Trin. 15 E. 1. Rot. 3. where ſuch a Writ was awarded for one Nicholas de Stapleton, whoſe Hedges were caſt down noctanter, and not being known by whom, had a Writ to diſtrain propinquas villas to repair, and he ſaid that was the preſident for this caſe; and he prayed a new Diſtringas might be awarded; & habuit.

Thereupon iſſued out a Diſtring. againſt propinqua villatas, to repair the Fences.

Return thereunto.

Iſſues retorned upon every Village.

The Inquiſition.

Several Exceptions taken to it.

The writ is only to ſhew the grief breviter.

The King againſt the Inhabitants of Epworth, Mic. 11 Car. Rot. 146. Cr. Car. 440.

Afterwards (viz.) Mich. 11 Car. Rot. 146. upon the like occaſion a Writ was granted in the caſe of the King, and the like Inquiſition retorned, and Exceptions taken to the Writ and Retorn: viz. Firſt, That the Writ was not well granted; for it appears by the Writ and Inquiſition, that the proſtration began the firſt day of May, 10 Car. and continued till the firſt day of June, 11 Car. ſo that it was but a ſhort time (viz. five dayes) before the Writ

Inquiſition retorned.

Exceptions taken to it.

1. *Exception.*

Writ brought, which ought not to be, but there ought to be so long distance as the Country may have a convenient time to enquire, which ought to be a year; and so it was held in 12 Jac. Secondly, it doth not appear that this prostration was of any Fences, &c. of the Common which was improved. Thirdly, that the Writ doth not make any mention, that the Malefactors were not indicted. But Sir Jo. Bancks the Kings Attorney, answered to the first, That he had seen the resolution of 12 Jac. and it was not that there should be a year to indict the Offendors, but there ought to be a convenient time, and that the Court shall adjudge whether the time were convenient. To the second, that the Statute doth not only extend to the prostration of Inclosures to be improved out of the Common, but to all Inclosures; and it is for the benefit and peace of the Commonwealth, and shall be expounded most favourably for the King, and benefit of the Commonwealth: And if it extends only to improvement of Commons, it ought to have been pleaded, that this Inclosure was not any parcel of the Common improved. To the third, that the Defendant should have pleaded, if any of the Offendors had been indicted: Et adjornatur. Vide the Statute of Westm. 2. cap. 46. upon which this Writ is grounded.

2. *Exception.*

3. *Exception.*

The Answer to the first.

To the second.

To the third.

W. 2. cap. 46.

CAP.

CAP. V.

Retorns of Writs.

SECT. 1.

Midds. ſſ. INquiſitio indentat. capt. apud *V.* in Com. prædict. 17 die *Junii* anno regni Domini *Caroli* ſecundi nunc Regis *Angliæ*, &c. 19. coram me *C. P.* Armig. Vic. Com. prædict. virtute brevis Domini Regis mihi direct. & hinc Inquiſitioni annexat. per Sacramentum *A. B. C. D.* &c. proborum & legalium hominum de Balliva mea, qui onerat. & jurat. exiſten. dicunt ſuper Sacramentum ſuum, quod *W. R.* in dicto brevi hinc Inquiſitioni annexat. nominat. die captionis hujus Inquiſitionis poſſeſſionatus fuit, de bonis & catallis ſequen. ut de bonis & catallis ſuis propriis, videlicet, de vigint. Vaccis, precii decem librarum, & de vigint. Ovibus, precii decem ſolidorum, quas ego præfat. Vic. prædict. *R. O.* liberari feci tenend. ſibi bona & catalla prædict. ut bona & catalla ſua propria, in parte ſatisfactionis debiti & dampnorum ſuorum prædict. in brevi prædict. mentionat. Et ulterius Jur. prædict. ſuper Sacramentum ſuum prædict. ſcilicet dicunt, quod prædict. *W. R.* tempore redditionis judicii prædicti, ſcilicet in prædict. Octab. Sancti *Hillar.* ſeiſit. fuit in Dominico ſuo, ut de feodo, de & in uno capitali Meſſuagio, una domo portal. (Anglice a Gate-houſe) duobus horreis, & duobus ſtabulis, cum pertin. & tribus Gardinis, & tribus Pomariis, eidem capitali Meſſuagio adjungen. Ac etiam de & in quinquaginta acr. terræ arrabilis & paſturæ, aut eo circiter, prox. prædict. capitali Meſſuagio jacen. & ad inde pertinen. clari annui valoris in omnibus exitibus ultra repriſ. quatuordecim librarum & decem ſolidorum. Ac etiam de & in quinquaginta acr. prati, aut eo circiter, prædict. capitali Meſſuagio ſimiliter pertinen. clari annui valoris in omnibus exitibus ultra repriſ. viginti & quinque librarum. Ac de & in viginti acr. boſci, aut eo circiter, prædict. capitali Meſſuagio pertinen. clari annui valoris in omnibus exitibus ultra repriſ. quinque librarum. Ac de & in octoginta acris terræ arrabilis & paſturæ, aut eo circiter, prædict. capitali Meſſuagio pertinen. clari annui valoris in omnibus exitibus ultra repriſ. quadraginta & quinque ſibrarum, & decem ſolidorum; quæ quidem præmiſſa ſunt ſcituat. jacen. & exiſten. in Parochia de *L.* in dicto Com. *M.* & modo ſunt in tenura ſive occupatione prædict. *W. R.* ſive Aſſign. ſuorum. Ac etiam de & in uno al. Meſſuagio, ac diverſis aliis parcellis terræ arrabilis, prati & paſturæ, eidem Meſſuagio pertinen. continen. per æſtimationem ſexaginta & tres acras, aut eo circiter, clari

Return of an Inquiſition upon an Elegit.

As well for Goods as Lands

clari annui valoris in omnibus exitibus ultra repriſ. decem librarum, ſcituat. jacen. & exiſten. in Paroch. de *L.* prædict. & modo in tenura ſive occupatione prædicti *W. R.* ſive Aſſign. ſuorum. Ac etiam de & in uno alio Meſſuagio, & de diverſis aliis parcellis terræ arrabilis, prati & paſturæ, eidem Meſſuagio pertinen. continen. per æſtimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra repriſ. ſex librarum, & ſcituat. jacen. & exiſten. in Parochia de *L.* in Com. *M.* prædict. modo in tenura ſive occupatione *S. W.* Ac de & in uno alio Meſſuagio, & diverſis aliis parcellis terræ arrabilis, prati & paſturæ, eidem Meſſuagio pertinen. continen. per æſtimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra repriſ. ſex ſolid. & octo denar. ſcituat. jacen. & exiſten. in Parochia de *L.* prædict. & modo in tenura ſive occupatione *J. B.* Ac de & in duabus aliis parcellis terræ arrabilis & paſturæ, continen. per æſtimationem novem acr. aut eo circiter, clari annui valoris in omnibus exitibus ultra repriſ. treſdecim ſolidorum & quatuor denar. ſcituat. & jacen. in Paroch. de *L.* prædict. modo in tenura *P. T.* Ac etiam de & in tribus aliis parcellis terræ arrabilis & bruer. continen. per æſtimationem vigint. acr. aut eo circiter, clari annui valoris in omnibus exitibus ultra repriſ. quadraginta ſolidorum, ſcituat. jacen. & exiſten. in Parochia de *G.* in Com. *M.* prædict. & modo in tenura ſive occupatione *W. M.* Et Jur. prædict. ſuper Sacramentum ſuum prædict. ulterius dicunt, quod prædict. capitale Meſſuagium, prædict. domus portal. (Anglice a Gate-houſe) prædict. duo horrea, & prædict. duo ſtabula cum pertin. prædict. tria Gardina, & prædict. tria Pomaria adinde pertinen. & prædict. quinquagint. acr. terræ arrabilis & paſturæ, aut eo circiter, prox. prædict. capitali Meſſuagio jacen. & adinde pertinen. & prædict. quinquagint. acr. prati, prædict. capitali Meſſuagio ſimiliter ſpectan. & prædict. vigint. acr. boſci, una cum prædict. Meſſuagio, & prædict. diverſis parcellis terræ arrabilis, prati & paſturæ, continen. per æſtimationem ſexagint. & tres acras, aut eo circiter, ſunt vera & equalis medietas omnium & ſingulorum terrarum, tenementorum & hæreditamentorum quorumcunque in Com. *M.* prædict. prædicti *W. R.* in dicto brevi nominat. quam quidem medietat. ego prædict. Vic. prædict. die captionis hujus Inquiſitionis, prædicto *R. O.* Gen. in dicto brevi nominat. ad rationabile precium & extent. liberari feci, tenend. ſibi & Aſſign. ſuis ut liberum tenementum ſuum, juxta formam Statuti inde edit. & proviſ. quouſque reſid. debiti & dampnorum prædict. in brevi prædict. ſpecificat. inde levaverit, prout breve prædict. in ſe exigit & requirit: Et ulterius Jur. prædict. ſuper Sacramentum ſuum prædict. dicunt, quod prædict. *W. R.* in brevi prædicto nominat. tempore redditionis judicii prædict. in dicto brevi ſpecificat. non habuit, nec die captionis hujus Inquiſitionis aliqua alia ſive plura habet bona ſeu catalla, terra ſeu tenementa in Com. prædict. ad notitiam Jur. prædict. In cujus rei teſtimonium, tam ego præfat. Vic. quam Jur. prædict. huic Inquiſitioni ſigilla noſtra alternatim appoſuimus, die, anno & loco ſupradictis.

C. P. Ar. Vic.

The words of the Writ muſt be purſued.

Note, that in all Retorns of this or any other nature, the words of the Writ ought to be purſued.

The Sheriff muſt deliver juſt a moiety.

Note alſo, the Sheriff muſt be ſure, after the Jury have found the parcels and appraized them, to deliver to the Plaintiff juſt a moiety, according to the appraizement of the Jury, and no more, for if he Retorns more or leſs, the Retorn is void.

Inquiſitio

Midd. ſſ. Inquiſitio indentat. capt. apud *S.* in Com. prædict. (tali die & anno) coram me *R. E.* Barr. vic. Com. prædict. virtute brevis Domini Regis mihi direct. & huic inquiſitioni annex. *A. R. M. B.* & cæter. terr. tenent. tenement. in brevi prædict. mentionat. cum pertin. per me inde præmunit. exiſten. ſi intereſſe voluerint per ſacramentum *F. B.* Genr. (& cæter. jur.) qui jurat. & onerat. exiſten. dicunt ſuper ſacramentum ſuum, quod unum molendinum aquaticum cum pertin. communiter vocat. *Home Milne*, & ſex acre prati & paſturæ eidem molendino aquatico vocat. *Home Milne* ſpectan. ſive pertinen. ſcituat. jacen. & exiſten. in Paroch. de *W.* & *G.* in Com. prædict. ſeu in earum una & in brevi predict. mentionat. ac modo vel nuper in tenura ſive occupatione cujuſdam *J. C.* vel aſſignatorum ſuorum in eodem brevi nominat. ſunt clari annui valoris in omnibus exitibus ultra repriſ. decem librarum, *&c.* (and ſo ſet out all the particulars.) Quam quidem medietatem ſcilicet prædict. molendinum aquaticum vocat. *Holme Milne* & cætera præmiſſa prædicta in iſta inquiſitione præmentionat. cum pertin. ego præfat. vic. poſtea ſcilicet (tali die) (prædict. *A. R. M. B. &c.* terr-tenen. prædict. per me inde præmunit. exiſten. ſi intereſſe voluerint) liberari feci *E. B.* vid. in eodem brevi ſimiliter nominat. (per *T. S.* Gen. ejus in hac parte certum Attorn. ſive Aſſign. legitime conſtitut.) tenend. medietatem prædict. cum pertin. ſibi præfat. *E. B.* & Aſſign. ſuis ut liberum tenementum ſuum quouſq; treſcent. libr. bonæ & legalis monetæ Angliæ plenar. fuerint inde levat. juxta exigentiam ejuſdem brevis ac prout per idem breve mihi præcipitur. In cujus rei teſtimonium, *&c.*

Inquiſitio ſuper breve de Eligir. extra Canc. ſuper recogn.

Le Moiety ſet out.

Terr-Tenantes præminuit.

Delibat. per Vic. Attorn. quær. loco quær.

E. R. Bar. Vic.

The form of a Retorn by the New Sheriff, when the Writ was executed by the Old Sheriff.

Executio iſtius brevis patet in quadam inquiſitione huic brevi annex.

R. E. Bar. Vic.

Iſtud breve ſic indorſ. mihi deliberat. fuit per præfat. *R. E.* Barr. nuper Vic. Com. mei *M.* in ejus exit. ab officio ſuo.

R. H. Ar. modo Vic.

Midd. ſſ. Inquiſitio indentat. capta apud *M.* in Com. prædict. (tali die & anno) coram me *W. W.* Baronett. Vic. Com. prædict. virtute brevis Domini Regis de diem clauſit. extremum mihi direct. & huic inquiſitioni annex. per ſacramentum *I. P.* &c. proborum & legalium hominum de balliva mea, qui onerat. & jurat. exiſten. dicunt ſuper ſacrum ſuum, quod *J. B.* in prædict. brevi nominatus, obiit apud *H.* in Com. prædict. circa tres menſes jam ult. elapſ. ante diem captionis hujus inquiſitionis, & tempore mortis ſuæ ſeſitus fuit in dominico ſuo ut de fœodo, de & in uno meſſuagio cum area & pomar. eidem ſpectan. & pertinen. cum ſuis pertin. ſcituat. jacen. & exiſten. in Parochia de *H.* in Com. predict. modo vel nuper in tenura ſive occupatione cujuſdam *T. C.* vel aſſignat. ſuorum clari annui valoris in omnibus exit. ultra repriſ. viginti ſolid. ac etiam jur. prædict. ſuper ſacramentum ſuum prædict. ſimiliter dicunt quod prædict. *J. B.* poſſeſſionatus fuit ut de bonis & catallis ſuis propriis, de & in una locatione (Anglice Leaſe) ſive dimiſſione, pro termino treſdecim annorum tunc ventur. & inexpirat. ſibi præfat. Johanni in vita ſua, per quendam *P.* Gen. per Indenturam fact. & ſigillat. de & in uno meſſuagio, cum areis, gardinis, & pomariis, eidem ſpectan. & pertinen. ſcituat. & exiſten. in Parochia de *H.* prædict. nuper in occupatione præfat. *J. B.* vel aſſignatorum ſuo-

Inquiſitio ſuper breve de diem clauſit extremum.

Obiit ſeiſit.

Poſſeſſion of a Leaſe for years found.

rum, & modo in occupatione *E. B.* viduæ nuper uxoris ejus vel aſſignatorum ſuorum, ac una parcella ſive clauſo terr. cum pertin. jacen. & exiſten. in prædict. Parochia de *H.* prædict. continen. per eſtimationem tres acras, ſive plus ſive minus, dicto Meſſuagio ult. recitat. ſpectan. ſive pertinen. modo vel nuper in occupatione præfat. *E. B.* vid. vel aſſignatorum ſuorum, quæ uidem locatio ſive dimiſſio, dict. Meſſuag. & præmiſſ. ult. recitat. ac termin. ſtat. & intereſſe, de quibus idem *J. B.* prædict. tempore mortis ſuæ ſic ut præfertur poſ-

The value thereof. ſeſſionatus fuit, valent. ad vendend. decem libras legalis monetæ Angliæ ultra omnes reddit & repriſ. & ulterius Jur. prædict. ſimiliter dicunt ſuper Sacramentum ſuum prædict. quod prædict. *J. B.* tempore mortis ſuæ, poſſeſſionat. fuit ut de bonis catallis & utenſiliis, (Anglice Houſhold-ſtuff) cum pertin. particularit. mentionat. & expref. in

Poſſeſſion of houſhold-goods found, and annexed in a Schedule. Inventorio ſive Schedula indentat. & dicto brevi huic Inquiſitioni annex. ac per Jur. prædict. appreciat. ad ſeparal. ſummas, & valor. in eodem Inventorio ſive Schedula ſimiliter ſpecificat. & quæ in toto attingunt, ad ſummam viginti & quatuor librarum, quæ quidem bona catalla & utenſilia, ſunt jacen. & exiſten. in & circa prædict. Meſſuag. & areas in *H.* prædict. in occupatione præfat. *E. B.* & in ſuper Jur. prædict. ſuper Sacramentum ſuum prædict. ſimiliter dicunt,

An Obligation found. quod quidem *T.* de *H.* prædict. Grocer & *S. S.* de *M.* in dicto Com. *Midd.* Clericus, perſcriptum ſuum obligatorium, geren. dat. ante diem mortis prædict. *J. B.* devener. obligat. præfato *J. B.* in vita ſua, in ſumma viginti & quatuor librarum, legalis monet. Angl. ſolvend. præfat. *J. B.* ad certum diem jam præterit. ac Jur. prædict. ſuper Sacramentum ſuum prædict. ſimiliter dicunt, quod prædict. bona, catalla, utenſilia, ac Indentura, & Scriptum obligatorium præmentionat. poſt mortem prædict. *J. B.* ad manus & poſſeſſionem,

Ad manus Executricis deven. præfat. *E. B.* uxoris ejus, & Executricis, devenerunt & in manibus ſuis jam exiſtunt, quæ omnia & ſingl. Meſſuag. locationem ſive dimiſſionem, bona, catálla, utenſilia, & cætera præmiſſa præmentionat. cum pertin. una cum prædict. Indentur. & ſcript. obligator. ac prædict. debit: viginti ac quatuor librarum, in eodem ſcripto obligat. mentionat. ego præfat. vic. dicto die captionis, hujus Inquiſitionis, in

In manus Domini Regis cepi, & ſeiſiri feci. manus dicti Domini Regis, cepi & ſeiſiri feci, juxta exigent. brevis prædict. ac prout per idem breve mihi præcipit: iidemq; Jur. prædict. ſimiliter dicunt, ſuper Sacramentum ſuum prædict. quod prædict. *J. B.* (tali die & anno) in brevi prædict. mentionat. quo die debitor. dicto Domino Regi devenit, ſeu unquam poſtea, nulla alia, ſive

Nulla alia, terr. tenementa, bona, ſeu catalla, *&c.* plur. habuit, terr. tenementa ſive hereditamenta, in dicta Balliva mea, neque die quo obijt, habuit aut poſſeſſionat. fuit, de aliquibus aliis, ſive plur. bonis, catallis, debit. credit. ſeu ſpecialitat. in Balliva mea, ad notic. Jur. prædict. ſeu eorum alicujus, quæ extend. aut appreciari poſſunt, In cujus rei, *&c.*

W. W. Barr. Vic.

Midd. ſſ. Inquiſitio ſuper breve de extend. fac. pro Domino Rege in auxilium D.H. verſ. J. W. Ar. Debitor. Domino Regi devenit.

Inquiſitio indentat. capt. apud *S.* in Com. prædict. (tali die & anno) coram me *M. L.* Armig. Vic. Com. prædict. virtute brevis dicti Domini Regis mihi direct. & huic Inquiſitioni annex. per Sacramentum *W. C.* &c. proborum & legalium hominum de Com. meo prædicto, qui jurat. & onerat. exiſten. dicunt ſuper Sacramentum ſuum, quod *I. W.* Ar. in brevi prædict. nominat. (tali die) quo die debitor. dicto Domino Regi primo devenit, ſeiſitus fuit, & die captionis hujus Inquiſitionis ſeiſitus exiſtit in Dominico ſuo, ut de feodo taliat. in reverſione cum acciderit, ſcilicet poſt mortem *A.* Dominæ *W.*

v. duæ,

viduæ, matris ejus, de & in reverſione tertiæ partis indiviſ. Manerii vocat. *B.* ſcituat. & exiſten. in Parochia de *M.* in dicto Com. *Midd.* in tres partes dividend. cum omnibus & ſingulis juribus, membris, reddit. ſervitiis & pertinen. quibuſcunque, eidem Manerio ſpectan. ſive pertinen. modo vel nuper in tenura ſive occupatione præfat. *A.* Dominæ *W.* vel aſſign. ſuorum; Ac etiam in reverſione cum accid. ſcilicet poſt mortem præfat. *A.* Dominæ *W.* vid. de & in tertia parte indiviſ. (in tres partes ſimiliter dividend.) omnium & ſingulorum terr. tenementorum & hæreditamentorum eidem Maner. ſpectan. ſive pertinen. cum pertin. aut cum eodem, modo vel nuper uſitat. ſive occupat. ut pars, parcell. ſive membr. ejuſdem, jacen. & exiſten. in Paroch. de *M.* prædict. modo vel nuper in tenura ſive occupatione præfat. *A.* Dominæ *W.* vid. vel aſſign. ſuorum, clari annui valor. in omnibus exitibus ultra repriſ. cent. librarum; (and ſo of the reſt of the parcells.) Quæ omnia & ſingula præmiſſa prædict. præmentionat. cum pertin. unde prædict. *I. W.* in reverſione prædict. ſicut præfertur ſeiſit. exiſtit, ego præfat. Vic. dicto die captionis hujus Inquiſitionis in manus dicti Domini Regis cepi & ſeiſiri feci, prout per breve prædict. mihi præcipitur: Ac ulterius Jur. prædict. ſuper Sacramentum ſuum prædict. ſimiliter dicunt, quod prædict. *A.* Domina *W.* modo ſuperſtes, & in plena vita exiſtit; Ac quod præfat. *I. W.* (tali die) ſeu unquam poſtea hucuſque, nulla alia ſive plura habuit, ſeu modo habet, Maneria, terr. tenementa ſeu hæreditamenta, nec dicto die captionis hujus Inquiſitionis aliqua habet bona ſeu catalla in dicta Balliva mea, ad notic. Jur. prædict. ſeu eorum alicujus, quæ modo extend. appreciari, aut in manus dicti Domini Regis ſeiſiri poſſunt. In cujus rei, &c.

Seiſin. de reverſione in feodo talliato, invent. in Manerio dividend. in partibus.

In manus Domini Regis cepit & ſeiſivit.

Quod tenens pro termino vitæ, modo ſuperſtes, & in plena vita, &c.

Nulla alia, ſive plura, &c.

Inquiſitio, &c. coram me *M. L.* Ar. Vic. Com. prædict. virtute brevis Domini Regis de melius inquirend. mihi direct. & hinc Inquiſitioni annexat. per Sacramentum *A. B.* (& cæterum Juratorum) proborum & legalium hominum de Balliva mea, qui jurat. & onerat. ad inquirend. qualiter & quomodo *F. H.* nuper de *P.* in Com. præd. Yeoman, ad mortem ſuam devenit, dicunt ſuper Sacramentum ſuum, quod prædict. *F. H.* in brevi prædict. nominat. apud *P.* prædict. in Com. prædict. ex viſitatione divina obiit; (or otherwiſe as the caſe ſhall be:) Et ſic Jur. prædict. dicunt, quod prædict. *F. H.* modo & forma prædict. & non aliter, nec aliquo alio modo ad mortem ſuam devenit. In cujus rei, &c. tam ego præfat. Vic. quam Jur. &c.

Inquiſitio ſur melius inquirend. quomodo & qualiter A. B. ad morte devenit.

Ex viſitatione divina obiit, &c.

Midds. ſſ. Inquiſitio indentat. capta apud *R.* in Com. prædict. (tali die.) coram me *M. L.* Barr. Vic. Com. prædict. virtute brevis dicti Domini Regis de re-extend. fac. ſuper Statut. Stapul. mihi direct. & huic Inquiſitioni annexat. per Sacramentum *T. T.* (inſert the Jurors names) proborum & legalium hominum de Balliva mea, qui jurat. & onerat. dicunt ſuper Sacramentum ſuum, quod *R. G.* nuper de *L.* in Com. *S.* Armig. modo defunct. in brevi prædicto nominatus citra (talem diem) in dicto brevi mentionat. (quo die debit. mille librarum in eodem brevi ſpecificat. per ipſum recognit. fuit) ſeiſitus fuit in Dominico ſuo ut de feodo, de & in tota illa pecia & parcella Mariſci & terr. Mariſcal. cum pertin. continen. per æſtimationem decem acras, &c. jacen. & exiſten. in Paroch. de *A.* in dicto Com. *M.* abbuttan. ſive prope adjacen. cuidam loco ibidem vocat. *C. O.* ex parte orien. &c. ante hac in ſeparalibus tenuris ſive occupationibus, quorundam *T. D.* & *I. H.* aut eorum unius, vel aſſign. eorum, aut

Inquiſitio ſuper breve de re-extend. fac. ſuper Stat. Stapul. pro Executore.

Seiſin en fee.

unius eorum: Quæ omnia & ſingula catalla, peciæ & parcellæ Mariſci & terr. Mariſcal. & cætera præmiſſa præmentionat. cum pertin. de quibus prædict. *R. G.* ſic ut præfertur ſeiſitus fuit, in Dominico ſuo ut de feodo, ego præfat. Vic. dicto die captionis hujus Inquiſitionis, diligenter extendi & appreciari, & in manus dicti Domini Regis nunc ſeiſiri feci, ut idem Dominus Rex, ea *Edwardo* Comiti *S.* Executori teſtamenti & ultimæ voluntatis *S. M.* Militis, in brevi prædict. ſimiliter nominat. quouſque ſibi de prædict. debito mille librarum plene ſatisfact. fuit, liberari fac. juxta formam Statuti apud *Weſtm.* pro hujuſmodi debit. recuperand. inde edit. & proviſ. ſecundum tenorem & effectum ejuſdem brevis, ac prout per idem breve mihi præcipitur: Ac ulterius Jur. prædict. ſuper Sacramentum ſuum prædictum ſimiliter dicunt, quod nulli ſunt ſive exiſtit, hæredes ſive hæredem, qui infra ætatem exiſtunt ſive exiſtit, quibus vel cui præmiſſa præmentionat. cum pertin. de quibus prædictus *R. G.* ſic ut præfertur ſeiſitus fuit, in Dominico ſuo ut de feodo, aut aliqua inde parcella, jure hæreditario diſcenderunt ſive diſcendit, ad notitiam eorum, aut alicujus eorum: Denique Jur. prædict. ſuper Sacramentum ſuum prædictum ſimiliter dicunt, quod nulla ſunt bona ſeu catalla in Balliva mea, quæ fuerunt præfat. *R. G.* die obitus ſui; neque ſunt aliqua alia ſive plura terr. tenementa ſeu hæreditamenta, in dicto Com. *M.* de quibus idem *R. G.* prædict. (die, &c.) ſeu unquam poſtea ſeiſitus fuit, in Dominico ſuo ut de feodo, quæ extendi, appreciari, aut in manus dicti Domini Regis nunc capi aut ſeiſiri poſſunt, ad notitiam Jur. prædict. ſeu eorum alicujus. In cujus rei teſtimonium, tam ego præfat. Vic. quam Jur. prædict. ſigilla noſtra huic Inquiſitioni appoſuimus, die & anno primo ſupradict.

Seiſivit in manus Domini Regis.

Nullus hæres infra ætatem.

Nulla bona.

Midd. ſſ. Inquiſitio ſuper Stat. Stapl.

Inquiſitio indentat. capta apud *W.* in Com. prædict. (tali die) coram me *A. B.* Mil. & Barr. Vic. Com. prædict. virtute brevis dicti Domini Regis de Statut. Srapul. mihi direct. & huic Inquiſitioni annexat. per Sacramentum *I. S.* (inſert the Jurors) proborum & legalium hominum de Balliva mea, qui jurat. & onerat. dicunt ſuper Sacramentum ſuum, quod *W. G.* de *A.* in Com. prædict. Armig. in brevi prædicto nominatus, dicto die captionis hujus Inquiſitionis poſſeſſionatus fuit & exiſtit, de bonis & catallis ſuis propriis, de & in omnibus & ſingulis bonis & catallis in Schedula ſive Inventorio indentat. huic Inquiſitioni annexat. particulariter mentionat. & expreſſis, ſeparalium preciarum & valorum, in eadem Schedula ſive Inventorio particulariter ſpecificat. attingen. in toto ad ſexaginta & tres libras, legalis monetæ *Angliæ*: Ac etiam Jur. prædict. ſuper Sacramentum ſuum ſimiliter dicunt, quod prædict. *W. G.* & *M.* uxor ejus, nuper dicta *M. G.* citra tempus recognitionis debit. octingentarum librarum in eodem brevi mentionat. ſcilicet citra (diem, &c.) in dicto brevi ſpecificat. ſeiſit. fuer. & dicto die captionis hujus Inquiſitionis ſeiſit. eſt, (in jure ipſius *Mariæ*) in Dominico ſuo ut de feodo, de & in medietate omnium & ſingulorum Meſſuagiorum, tenementorum & hæreditamentorum quorumcunque, cum pertin. poſtea particulariter mentionat. & expreſſ. exiſten. in toto clari annui valoris in omnibus exitibus ultra repriſ. 70 l. legalis monetæ *Angliæ*: Ac de & in medietate duorum Clauſ. (name the particulars here:) Omnia quæ quidem Meſſuagia, terra, tenementa & hæreditamenta præmentionat. cum pertin. prædict. *W. G.* & *Maria* uxor ejus, ut in jure ipſius *Mariæ*, & *I. H.* Gen. & *Franciſca* uxor ejus, ut in jure ipſius *F.* inſimul pro indiviſo tenent. ac de eiſdem modo ſeiſiti exiſtunt, in Dominico

Poſſeſſion of Goods in a Schedule annexed.

ſeiſit. jure uxoris.

Quod tenent inſimul & pro indiviſo.

minico ſuo ut de feodo: Ac ulterius Jur. prædict. ſuper Sacramentum ſuum prædict. ſimiliter dicunt, quod prædict. *M.* uxor prædict. *W. G.* adhuc ſuperſtes & in plena vita exiſtit, ſcilicet apud *W.* prædict. in Com. prædict. Ac inſuper Jur. prædict. ſuper Sacramentum ſuum prædict. ſimiliter dicunt, quod prædict. *W. G.* citra tempus recognitionis debiti prædicti, in dicto brevi ſpecificat. ſcilicet citra prædict. (diem, &c.) ſeiſitus fuit, & dicto die captionis hujus Inquiſitionis ſeiſit. exiſtit, in Dominico ſuo ut de feodo, de & in uno capitali Meſſuagio, &c. Quæ quidem bona & catalla in Schedula ſive Inventorio prædict. mentionat. necnon omnia & ſingula Meſſuagia, terra, tenementa & præmiſſa præmentionat. cum pertin. ſcilicet tam medietatem omnium & ſingulorum Meſſuagiorum, Cotsagiorum, terrarum, tenementorum & hæreditamentorum, cum pertin. de quibus prædict. *W. G.* & *M.* uxor ejus, ſic ut præfertur ſeiſiti fuerunt & exiſtunt, in Dominico ſuo ut de feodo, in jure ipſius *M.* Quam prædict. capitale Meſſuagium, &c. ego præfat. Vic. in manus dicti Domini Regis ſeiſiri feci, juxta exigentiam brevis prædict. ac prout per idem breve mihi præcipitur. Ac denique Jur. prædict. ſuper Sacramentum ſuum prædictum ſimiliter dicunt, quod prædictus *W. G.* die teſt. brevis prædict. ſcilicet (tali die, &c.) anno ſupradicto, ſeu unquam poſtea hucuſque poſſeſſionatus fuit ſive exiſtit, de null. aliis ſive pluris bonis ſeu catallis in Balliva mea, neque fuit ſive exiſtit, idem *W. G.* in jure ſuo proprio, aut in jure præfat. *M.* uxor ejus, ſeiſitus de aliquibus aliis ſive pluribus terris, tenementis ſeu hæreditamentis in dicto Com. *M.* prædicto tempore recognitionis debiti prædicti, ſcilicet dicto (die, &c.) anno ſupradicto, ſeu unquam poſtea hucuſque, quæ extendi, appreciari, aut in manus dicti Domini Regis ſeiſiri poſſunt, ad notitiam Jur. prædictorum, ſeu eorum alicujus. In cujus rei teſtimonium, tam ego præfat. Vic. quam Jur. prædict. ſigilla noſtra huic Inquiſitioni appoſuimus, die & anno primo ſupradictis.

Adhuc ſuperſtes, & in plena vita.

Deliver'd by the Sheriff, as well Goods as Lands.

Nulla alia bona, terr. &c.

Qui dicunt ſuper Sacramentum ſuum quod *A.* in brevi prædict. nominat. prædict. die captionis hujus Inquiſitionis poſſeſſionatus fuit, de bonis & catallis hic poſtea mentionat. ut de bonis & catallis ſuis propriis, videlicet de uno equo præcii 40 *s.* tribus vaccis cum tribus vitulis, præcii cujuſlibet vaccæ cum vitulo ſuo 30 *s.* una menſa, tribus cathedris, tribus ſellis vinctis, (and ſo name all the goods in particular) ad valenc. 10 *l.* & Jur. prædict. ſuper Sacramentum ſuum prædict. ulterius dicunt, quod prædict. *A.* die redditionis judicii in brevi prædict. mentionat. ſcilicet die, *&c.* ſeiſit. fuit & modo ſeiſit. exiſtit in Dominico ſuo ut de feodo, vel in Dominico ſuo ut de libero tenemento in Jure *B.* uxor. ejus, (quæ modo ſuperſtes & in plena vita exſtitit) (as the caſe is) de & in uno Meſſuagio & quibuſdam parcellis terræ, prati, & paſturæ, cum pertin. continen. per æſtimationem centum acras, vocat. vel cognit. per nomen de Damonds Farm, ſcituat. jacen. & exiſten. in *D.* in Com. prædict. modo vel nuper in tenura vel occupatione *F.* vel aſſignorum ſuorum, clari annui valoris in omnibus exitibus ultra repriſ. 20 *l.* ac de & in, (and ſo find all the Lands) omnia quæ quidem bona & catalla ſupradicta, necnon medietat. terrarum & tenement. prædict. per Inquiſitionem prædict. in forma prædict. compert. videlicet prædict. Meſſuagium, *&c.* (and ſo aſſign a Moiety) ego præfat. vic. prædict. die captionis hujus Inquiſitionis, virtute brevis prædict. præfat. *R.* in eodem brevi mentionat. per rationabile precium & extent. prædict. liberari feci tenend. bona & catalla prædict. ut bona & catalla ſua propria, ac etiam tenend. medietat. prædict. ut liberum tenementum

Another Return of an Elegit executed de bonis & catal. & de terris.

A moiety ſet out.

mentum ſuum ſibi & aſſign. ſuis, juxta formam ſtatuti in eodem brevi mentionat. quouſq; debitum & dampna in eodem brevi ſpec. plenar. inde levaverit, prout breve illud in ſe exigit & requirit: & ulterius Jur. prædict. dicunt ſuper Sacrament. ſuum prædict. quod prædict. *A.* non habuit (tali die) in brevi prædict. ſpec. (quo die breve illud emanavit) nec unquam poſtea aliqua alia ſive plura bona ſeu catalla in balliva mea, nec habuerint prædict. die redditionis Judicii prædict. ſeu unquam poſtea aliqua alia ſive plur. terras, ſeu tenementa, in balliva mea, quæ extendi & appreciari poſſunt ad notic. Jur. prædictorum. In cujus rei teſtimonium, *&c.*

Lands & feefarm ent extended on an Elegit, and the Rents only delivered for a Moiety.

Qui dicunt ſuper Sacramentum ſuum, quod *A.* in brevi prædict. nominat. die redditionis Judicii in eodem brevi mentionat. ſcilicet die, *&c.* ſeiſit. fuit in Dominico ſuo ut de feodo, de & in Manerio de *D.* cum pertin. in Com. prædict. ac de & in uno capital. meſſuagio, cum pertin. *&c.* (and ſo go ober all the Lands in common fozm) ac de & in toto illo annuali reddit. ſine feodo firmo, triginta & quinque librarum legalis monetæ Angliæ exem. ſive reſervat. de vel ex Manerio de *D.* in Com. prædict.

Retorn. breve de inquir. ſuper Statut. Weſtm. 2. c. 46. de eis qui noctant. ſepes proſtraver, *&c.* *This Writ being at the ſuit of a private perſon, it muſt be indorſed,* Pleg. de proſ. J. Doo. & Rich. Roo.

Inquiſitio Indentat. capt. &c. virtute brevis dicti Domini Regis ad inquirend. qui malefactores & pacis Dominici Regis perturbatores apud *R.* in Com. prædict. vi & armis ſepes & foſſat. *Henr. W.* ibid. per ipſum nuper levat. noctant. aut (tali tempore) quo facta eorum ſcire non credebant proſtraver. ad grave dampnum ipſius *Henr. W.* eidem vic. direct. & huic Inquiſitioni annex. per Sacramentum, *&c.* proborum, *&c.* Qui dicunt ſuper Sacramentum ſuum, quod quidam malefactores & pacis dicti Domini Regis perturbatores, 21 die Auguſti, Anno, &c. apud &c. vi & armis, ſeptuagint. perticat. ſep. & foſſat. prædict. *Henrici* ibid. nuper ante tunc per ipſum levat. noctant. aut tali tempore quo facta eorum ſcire non credebant proſtraſſent, contra pacem dicti Domini Regis, ſed qui vel quis ſepes & foſſat. prædict. proſtraſſet vel proſtraſſent, Jur. prædict. penitus ignorant. In cujus rei teſtimonium, *&c.* See foz this in Chap. Retozn in this Supplement.

Retorn. breve de diſtr. propinquas villat. ſepibus præd. circumadjacen.

Indoꝛſe on the back of the Writ, Manucapt. ſeparalium inhitan. de *E. F. G.* (naming every Mill) exiſten. propinque villat. ſepibus & foſſat. infraſcript. circumadjacen. *Johannes Doo, & Richardus Roo.*

Exit. inhitan. de *E.* —— 5 l.
Exit. inhitan. de *F.* —— 5 l. & ſic de cæteris vill.

Tarde Retorn.

Et ulterius Domino Regi infraſcript. certifico, quod iſtud breve adeo tarde mihi deliberat. fuit, quod propter brevitat. temporis dampna in Inquiſitione huic brevi annex. mentionat. eidem Domino Regi reſtituere non poſſum, reſid. executionis iſtius brevis, patet in Inquiſitione prædict. huic brevi annex.

Inquiſitio, &c. Qui dicunt ſuper Sacramentum ſuum, quod *Henr. W.* in brevi huic Inquiſitioni annex. nominat. ſuſtinuit dampna occaſione in eodem brevi ſpecificat. ad 80 l. In cujus rei, &c.

Note, If the Sheriff omit any of the Mills that are circumadjacent out of his Retozn, the reſt have an action againſt him foz ſo doing.

Ego

Reſcous retorn.

Ego *A. B.* Mil. Vic. Com. prædict. Juſtic. Domini Regis de Banco, ad diem & locum in brevi huic Schedulæ annex. mentionat. certifico, quod virtute iſtius brevis mihi direct. ego præfat. Vic. feci quoddam warrantum meum ſigillo officii mei Vic. ſigillat. quibuſdam *R. D.* & *S.* Ballivis meis, conjunctim & diviſim direct. ad capiend. & arreſtand. *W.* in eodem brevi nominat. ad reſpond. *I. F.* in eodem brevi nominat. de placito debiti 200 l. ſecundum exigen. iſtius brevis; qui quidem *R.* & *D.* poſtea, & ante retorn. brevis prædict. ſcilicet 11 Jan. &c. præfat. *W.* apud *Pagham* in Com. prædict. virtute warrant. prædict. ceperunt & arreſtaverunt, & eum uſque Gaolam Domini Regis apud *H.* in eodem Com. ductur. fuit; atque ea de cauſa prædict. *R.* & *D.* 12 die Jan. &c. ipſum *W.* à *Pagham* prædict. uſque *Palborough* in eodem Com. erga Gaolam prædict. duxiſſent, ſuper quo prædict. *W.* & quidam *A.* & *B.* prædict. 12 die Jan. &c. anno, &c. vi & armis, &c. in præfat. Ballivos meos apud *Palborough* prædict. inſult. fecer. & prædict. *A.* & *B.* prædict. *W.* (ſic arreſtat. & in itinere ſuo erga Gaolam prædict. exiſten.) extra cuſtodiam meam, contra voluntat. eorundem Ballivorum meorum, ad tunc & ibidem reſcuſſerunt, & eundem *W.* ad largum ire procuraverunt: Et prædict. *W.* ſeipſum ad tunc & ibidem (ſimiliter) reſcuſſit & eſcapiavit: Et poſtea, & ante retorn. brevis prædict. præfat. *W.* non eſt invent. in Balliva mea. (Vide Chapter Reſcous in this Supplement.

Capt. apud Pagham, *and carried to* P. *toward the Gaol, and there reſcued.*

Al. Hab. Corp. nul tiel priſonar.

Certifico, quod infranominat. *I. D.* non detent. exiſtit in priſona ſub cuſtod. mea, nec fuit die receptionis iſtius brevis, ſeu unquam poſtea, nec aliqua cauſa detentionis ipſius *I.* mecum reſidet: Et ideo corpus ejus coram, &c. habere non poſſum.

Certificate by Sheriff and coroners that J. T. *hath given ſecurity for his good behaviour before the allowance of his pardon.*

Nos *R. R.* Mil. & *R. F.* Mil. Vic. Civitat. *London.* & *E. M.* Coronator ejuſdem Civitatis, Sereniſſimo Domino Regi in Canc. ſua humillime certificamus, quod virtute brevis Domini Regis huic Schedulæ annex. nobis direct. cepimus bonam & ſufficient. ſecuritat. pro *Johanne Turnor*, in dicto brevi nominat. (videlicet) ſex manucaptores ſufficient. qui ſuſceperunt ſuper ſe pro prædict. *Johanne*, quod idem *Johannes* ſeipſum bene gereret, tam erga dict. Dominum Regem nunc hæred. & ſucceſſores ſuos, quam erga cunctum populum dicti Domini Regis, ſecundum formam Statut. in brevi prædict. mentionat. Cujus ſecuritatis forma in altera Schedula huic brevi annex. plenius liquet & apparet. In cujus rei teſtimonium, tam præfat. Vic. quam Coronator. prædict. his præſentibus ſigilla ſua apponi fecerint, 22 die April. Anno regni dicti Domini Regis nunc 16.

Vide *the Stat.* 10 *E.* 3. *whereupon this writ is made.*

In another Schedule anner the ſecurity it ſelf.

Et ulterius prædict. Advocatio Eccleſiæ de *T.* prædict. allocatur & aſſignatur, per me præfat. Vic. prædict. *Tho. W.* & *D.* uxori ejus, *A. N.* & *Elizabetha* uxori ejus, *H. S.* & *C.* uxori ejus, *T. H.* & *E.* uxori ejus, & *G. C.* & hæredibus apparent. *Dorotheæ*, *E. E. Cordeliæ* & *Gracia*, per turnos modo & forma ſequen. videlicet, quod prædict. *T. W.* & *D.* uxor ejus, in jure ipſius *D.* & hæred. & aſſign. ipſius *D.* Clericum ſuum ad eandem Eccleſiam cum primo & prox. vacare contingat, ut in turno ſuo præſentabunt: Et prædict. *A. N.* & *Elizabetha* uxor ejus, in jure ipſius *Elizabetha*, & hæred. & aſſign. ipſius *Elizabetha*, ad Eccleſiam prædict. cum per mortem, ceſſionem, privationem vel reſignationem Clerici, qui ad præſentationem prædict.

Brevi de partitione de Advocatione ad præſentand. per turnos.

T. W.

T. W. & *Dorothea* uxoris ejus, vel hæred. vel assign. ipsius *Dorothee*, ad eandem Eccleſiam fuerit admiſſus & inſtitutus, ſeu quocunque alio modo tunc prox. vacare continget Clericum ſuum ut in turno ſuo proprio præſentabunt: Et prædict. *H. S.* & *Cordelia* uxor ejus, in jure ipſius *C.* & hæred. & aſſign. ipſius *C.* Clericum ſuum ad eandem Eccleſiam, cum per mortem, ceſſionem, &c. (*ut ſupra*, of the laſt before, *& ſic de cæteris*, *&c.*) Et ſic alternatim & ſucceſſive prædict. *T. W.* & *D.* hæred. & aſſign. ipſius *D.* ut in turno ſuo, ac prædict. *A. N.* & *E.* uxor ejus, hæred. & aſſign. ipſius *E.* ut in turno ſuo, ac prædict. *H. S.* & *C.* hæred. & aſſign. ipſius *C.* uxoris ejus, ut in turno ſuo, ac prædict. *T. H.* & *E.* uxor ejus, hæred. & aſſign. ipſius *E.* ut in turno ſuo, & prædict. *Gracia*, hæred. & aſſign. ſui, ut in turno ſuo, præſentabunt Clericos ſuos reſpective ad Eccleſiam prædict. abſque contradictione ſive impedimento alicujus eorum ad alium imperpetuum.

The Sheriff upon a Fi. fac. *may ſell corn growing.*

Nota, the Sheriff upon a Fi. fa. may ſeize and ſell corn growing upon the Defendants land, and the party to whom this ſale is made, ſhall have liberty of cutting and carrying of it away, by virtue of ſuch ſale made by the Sheriff or other Officer in the execution of his Writ.

But it is a Quære *whether he may ſell graſs.*

But it is a Quære whether the Sheriff may ſeize and ſell graſs growing, becauſe graſs grows naturally out of the Land without any Tillage.

Al. acced. ad Cur. Vic. ret. quod ſeign. non vult tenere Cur.

Virtute, &c. acceſſi ad *R.* infraſcript. & ibidem rogavi infranominat. *W. S.* cum magna inſtanc. tenere Cur. ſuam infraſcript. ut executio iſtius brevis mihi direct. ibidem ſecundum formam ejuſdem per me fier. poſſit. Et idem *W.* Cur. ſuam ibidem, à tempore receptionis iſtius brevis, uſque diem retorn. inde, tenere minime curavit, & omnino recuſavit. Et ideo execut. iſtius brevis facere non poſſum.

Al. acced. ad Cur. ret. quod le ſuitors noluer. liberare record.

Virtute, &c. aſſumptis mecum *D. F.* &c. quatuor diſcret. & legal. Mil. de Balliva mea, acceſſi ad Cur. infranominat. *I. B.* tent. apud *O.* (tali die, &c.) ad recordand. in Cur. illa loquelam infraſcript. ad tunc & ibidem requirend. *B. C.* &c. ſectatores Cur. prædict. tunc ibidem exiſten. ad deliberand. mihi recordum loquele prædict. ut recordum illud haberem coram Juſtic. &c. prædict. quæ ſectatores recordum prædict. mihi liberare noluer. ob quod recordum illud coram Juſtic. &c. habere non poſſum.

Al. brief de homine repleg. rer. quod il eſt eſloigne.

Domino Regi certifico, quod executio iſtius brevis juxta formam & effectum inde facere non poſſum, eo quod ante adventum iſtius brevis mihi direct. *W. S.* infranominat. per infraſcript. *C. D.* & alios ad loca mihi incogn. elongat. fuit, & adhuc elongat. exiſtit, ita quod ipſum *W.* videre ac viſum ſeu notitiam de eo aliqualiter habere minime poſſum. Et ulterius certifico, quod nullum aliud breve ad replegiand. prædict. *W.* præterquam iſtud breve ad manus meas unquam devenit.

Al. repleg. averia, nullus ven. a monſtre l'avers.

Quoad Repleg. faciend. infranominat. *J.* catalla infraſcript. nullus ex parte ejuſdem *J.* venit ad oſtendend. mihi quæ, quot, & qualia catalla ipſius *J.* infranominat. *T.* & alii ceperunt & injuſte detinuer. Ideo catalla illa præfat. *J.* minime repleg. poſſum.

Iſtud

Iſtud breve & duo alia brevia ſimul & ſemel mihi deliberat. fuer. (tali die &c.) & non antea, & virtute iſtius brevis acceſſi ad *B.* in Com. meo, ubi averia infraſcript. fuer. ad illa, infranominat. *A.* replegiand. & infranominat. *E. B.* miles in Jure ſuo proprio, & infranominat. *W.* ut ballivus ipſius *E.* clam. proprietat. averiorum prædict. fore averia propria prædict. *E.* & ideo averia illa præfat. *A.* repleg. non potui, juxta exigent. hujus brevis. *A Retorn of property claimed*

Pro executione iſtius brevis faciend. mandavi Ballivo libertat. Domini Regis de *S.* parcell. ducat. ſui Lancaſtr. qui habet plenum retornum omnium brevium & executionem eorundem infra libertat. prædict. & cui execut. iſtius brevis totalit. pertinuit faciend. eo quod execut. ejuſdem brevis extra libertat. prædict. per me Vic. Com. prædict. fieri non poteſt, qui quidem Ballivus videlicet *R. D.* mihi ſic reſpond. quod virtute cujuſdam præcepti per me præfat. Vic. eidem Ballivo direct. fecit quoddam warrant. ſuum *R. R.* & *T.* ballivis ſuis conjunct. & diviſim, virtute cujus war. prædict. *R.* & *T.* infranominat. *G.* apud *B.* in Com. prædict. infra libertat. prædict. die lunæ 20. die &c. arreſtaver. & eum uſque Gaolum Domini Regis de *M.* ſalvo duci voluiſſent, & ſuper hoc prædict. *G.* cum multis aliis, modo guerrino arraiat. prædict. die, anno & loco in prædict. *R.* & *T.* vi & armis, videlicet gladiis &c. inſult. & reſcuſſum fecer. & eos adtunc & ibidem verberare & vulnerare voluiſſent, & ſic prædict. *G.* à cuſtod. Ballivi præd. evaſit, & eum nunquam poſtea in balliva ſua invenir. potuit. See Chapter Reſcous in this Supplement: *Reſcus ret. per ball. libertat.*

Qui dicunt ſuper Sacramentum ſuum, quod *A.* in brevi prædict. nominat. die redditionis Judicii in eodem brevi mentionat. ſcilicet die, &c. ſeiſit. fuit in Dominico ſuo ut de feodo, de & in Manerio de *D.* cum pertin. in Com. prædict. ac de & in uno capital. meſſuagio, cum pertin. &c. (and ſo go over all the Lands in common form) ac de & in toto illo annuali reddit. ſive feodo firmo, triginta & quinque librarum legalis monetæ *Angliæ*, exeum. ſive reſervat. de vel ex ſcitu domus mantionalis Manerii de *H.* in Com. prædict. cum ſuis pertinentiis univerſis, ac omnibus & ſingulis illis terris Manerio de *H.* prædict. ſpectan. ac omnibus illis terris prat. paſc. & paſtur. dominical. eidem Manerio, cum ſuis Juribus, membris & pertinen. univerſis in Com. prædict. annuat. ad feſta ſancti *Mich. Archang.* & Annunciat. beatæ *Mariæ* Virginis, per æquales portiones ſolvend. ac de & in toto illo annuali reddit. ſive feod. firm. decem librarum legalis, &c. exeum. ſive reſervat. de aut pro redditibus aſſiſe liberorum & cuſtomar. tenen. prædict. Manerii de *H.* & pro communi fine ejuſdem Manerii de *H.* in Com. prædict. annuat. ad feſta ſupradict. per æquales portiones ſolvend. & Jur. prædict. ſuper Sacramentum ſuum prædict. ulterius dicunt, quod prædict. ſeparales annuales reddit. 35*l.* & 10*l.* valent. clare per ann. in omnibus exit. ultra repriſ. 40*l.* & ſunt una medietas præmiſſorum prædict. per Inquiſitionem præd. ſuperius compert. Quos quidem ſeparales annuales reddit. 35*l* & 10*l.* Ego præfat. Vic. dict. die caption. hujus Inquiſitionis, virtute brevis prædict *J. W.* in eodem brevi nominat. per extent. prædict. liberari feci, per extent. prædict. tenend. ſibi & aſſignatis ſuis, &c. prout, &c. in Common form. *A Fee-farm Rent extended.*

Fuit ſeiſit. in Dominico ſuo, ut de libero tenemento pro termino vitæ ſuæ, de una annuitate ſive annuali reddit. 20*l.* exeun. de &c. ad feſta, &c. per æquales portiones ſolvend, &c. *Mich.* 23, 24. *Eliz. roll.* 801. *in Co. Banco. Vide Croke* 2. *part. fol.* 78. *An Annuity extended.*

Juſtic. infraſcript. certifico, quod quoad diſtringend. *A. B.* & cæteros Juratores in hoc brevi nominat. breve iſtud adeo tarde mihi liberat. fuit, quod propter temporis brevitatem executionem inde facere *Tarde quoad diſtr. Jur. executed, quoad tales.*

non poſſum, ſed quoad ponend. decem talium, unde in brevi prædict. fit mentio execut. inde patet, in quodam panello huic brevi annex. The panell of ten. Quilibet Jur. prædict. per ſe attach. eſt, per pleg. *J. D.* & *R. R.*

Al. breve de proclam. Vic. retorn. un foits proclam. fuit, & tarde quoad refid. execut. unde.

Virtute &c. Ad Com. meum *E.* tent. apud Caſtrum *E.* 20. die Junii, anno infraſcript. proclam. feci prima vice, quod infranominat. *W.* ſe redderet Vic. *London*, ita quod iidem Vic. haberent corpus ejus coram Juſtic. &c. ad diem & locum infracontent. ad reſpondend. infranominat. *C.* de placito infraſcript. et quoad plenam executionem iſtius brevis nihil ulterius actum eſt per me præfat. Vic. pro eo quod poſt receptionem iſtius brevis ac ante retorn. ejuſdem, non fuerint plur. Com. in eodem Com. *E.* tent. nec generalis ſeſſio pacis tent. fuit in partibus *C.* in brevi præſpec. Et ſic breve iſtud adeo tarde mihi liber. fuit, quod propter temporis brevitatem illud exequi non poſſum.

Sur. Ex' fa. quod le Coron. fuit abſent.

Quarto exact. fuit & ad eundem Com. *J. M.* & *C. D.* Coronatores Domini Regis Com. prædict. ſolempnit. exact. non vener. Ideo ad executionem brevis prædict. ob eorum defect. ulterius ibidem procedere non potui.

Quod fuit *but one coroner*, qui *refuſe to pronounce* le utlary.

Quinto exact. fuit & non comper. & quia nulli ibidem interfuer. Coron. Domini Regis Com. præd. præter *A. B.* Coron. Domini Regis in partibus de *S.* qui quidem *A.* Inditium Utlagarie in hac parte promulgand. ibidem reddere recuſavit. Ideo de ulteriori executione brevis prædict. per me nihil actum eſt ad præſens.

Al. bre. de viſum dote, ur. retorn. quod nullus & eum ad habend. viſum, &c.

Certifico, quod infranominat. *W.* nec aliqua perſona vel perſonæ pro eo, vel ex parte ſua non venit mihi meove ſub Vic. vel deputat. meo, ad habend. viſum de Manerio infraſcript. cum pertin. Ideo non potui cauſare ipſum *W.* habere viſum de Manerio illo, prout per breve illud mihi præcipitur.

Precept. del. Tolt.

A. B. imb. Vic. Com. predict. Ballivo Domini Regis & ſuo in Com. prædict. itineranti ſalutem, ex parte Domini Regis tibi præcipio firmit. injungend. quod in propria perſona tua accedas ad Cur. *C. D.* Ar. Manerii ſui de *S.* & loquelam quæ eſt in eadem Cur. per breve Domini Regis de *Recto paten.* inter *F. G.* & *M. P.* de tribus Meſſuagiis, *&c.* in *C.* tollas & illam habeas in Com. meo apud *N. die lunæ*, &c. prox. futur. tenend. & ſum. per bon. ſum. præfat. *M.* & *P.* quod tunc ſint ibi præfat. *F.* inde reſponſur. & habeas ibi ſum. & hoc præcept. dat. in Com. meo. apud *N.* die lunæ 2. die Maii anno, &c. Quia prædict. *M.* eſt unus ballivorum qui Cur. prædict. tenent. per quod prædict. *F.* rectum in Cur. illa conſequi non poſſit.

Vel ſine brevi, *as the caſe is.*

The like to remove any plaint, mutatis mutandis, and in every ſuch tolt a ſpecial cauſe muſt be aſſigned in the precept, as ſabour, &c.

Retorn. ſeiſina in Dote.

Virtute iſtius breve mihi direct. & huic Schedul. annex. (tali die & anno) habere feci *N. H.* & *A.* uxori ejus, in brevi prædicto nominat. plenariam ſeiſinam ſuam, de tertia parte terrarum & tenementorum cum pertin. in eodem brevi ſpecificat. (videlicet) de una aula, uno parvo introitu, una porticu, uno conclavi, uno promptuario, (Anglice a Buttery) uno domo lactuario, (Anglice a Milk-houſe) & una parva area, parcell. unius Meſſuagii in brevi prædicto content. modo in tenura ſive occupatione *I. F.* in eodem brevi nominat. cum liberis ingreſſu, egreſſu, & regreſſu, in, ad & ab eiſdem; Ac etiam de occidentali parte, unius pomarii, in eodem brevi ſpecificat. continen. per æſtimationem ſeptem virgat. in longitudine, & quatuor virgat. in latitudine, necnon de duabus acris & dimidii unius acræ terræ, parcell. octo acrarum terræ cum pertin. in brevi prædicto content. jacen. & exiſten. in auſtrali parte, & fine earundem octo acrarum terræ,

The particulars

terræ, ac modo vel nuper in tenura ſive occupatione prædicti *I. F.* vel aſſign. ſuorum, cum liber. ingreſſu, egreſſu, & regreſſu, in, ad & ab eiſdem; tenend. præfat. *N.* & *A.* in ſeparalitate, per metas & bundas, nomine totius dotis prædictæ *A.* ipſi præfat. *A.* de tent. in brevi prædict. ſpecificat. poſt mortem *P. L.* in eodem brevi nominat. contingen. prout per breve prædict. mihi præcipitur. Tenend. per metas & bundas.

Note, the Sheriff for his own ſafety before he makes retorn of this Writ, ſhould take the hand of the Atturney who proſecutes the Writ, to the draught or copy of this retorn, thereby deſiring the Sheriff to make the retorn, and declaring therein that he and his Client will be therewith content.

Pro executione iſtius brevis fiend. mandavi Ballivo libertat. &c. ut ſupra; qui quidem Ballivus, (videlicet) *A. B.* mihi reſpondet, quod ipſe virtute præcepti mei prædict. ſibi inde direct. 10 die, &c. cepit in manus Domini Regis tent. infraſcript. cum pertin. per viſum *A. B. C.* & *D.* proborum & legalium hominum de libertat. prædict. ac quod ſumm. infranominat. *R.* eſſendi coram Juſtic. infraſcript. ad diem & locum infracontent. (videlicet) per *W. M. R. T.* & *C. D.* Mandavi Ball. & ipſe reſp. &c. Grand cape in Formedon.

Infranominat. quær. non invenit mihi pleg. de proſequend. loquelam ſuam infraſcript. Ideo quoad execut. iſtius brevis nihil per me actum eſt. Al. orig. quæ. non inven. Vic. pleg. de proſequend.

Virtute, &c. per *Antonium B.* & *Tho. N.* probos & legales homines de Balliva mea, ſcire feci *Leonardo G.* tenenti unus Meſſuagii, unus domus Anglice vocat. a Forge, centum acrarum terræ, viginti acrarum prati, viginti acr. paſtur. viginti acr. boſci, & viginti acrarum jampnorum & bruer. cum pertin. ſcituat. jacen. & exiſten. in Parochia de *W.* (or, *Parochiis de W. F. & S.*) in Com. *Suſſex*, quæ fuer. terr. & tenement. infranominat. *I. B.* De quibus idem *I.* die redditionis judicii infraſcript. & poſtea ſeiſit. fuit in Dominico ſuo ut de feodo, quod ſit coram Domino Rege infraſcript. ad diem & locum infracontent. ad oſtendend. in forma infraſcript. & ulterius ad fac. & rec. prout iſtud breve in ſe exigit requirit: Et nulli ſunt hæred. neque eſt aliquis hæres prædict. *I.* nec ſunt aliqui tenentes, nec eſt aliquis tenens aliquorum al. terrarum vel tenementorum, quæ fuer. prædict. *I.* tempore redditionis judicii prædict. vel unquam poſtea in Balliva mea, cui vel quibus ſcire facere poſſum. (Vide Chapter Retorn in this Supplement.) Scir. feci verſ. ter-tenen.

Infranominat. *A.* nihil habet in Balliva mea, per quod diſtringere poteſt, nec eſt invent. in ead. Nihil *to the* diſtr. *in* Audita querela.

Non habet aliqua terr. ſeu tenementa, bona ſeu catalla in Balliva mea, per quod diſtringere poteſt. Aliter.

Infranominat. *A.* diſtrict. eſt per unum equum precii 5 l. & ſimiliter infranominat. *B.* diſtrict. eſt per unam peciam panni ad valenc. 10 s. Diſtrict. eſt per bona.

Manucapt. *A. B.* & utriuſque eorum { *Johannes Doo* per ſe, *Richardus Roo.*

Nota, See Dyer 199. The Sheriff retorns to the Original, that the Defendant was attached per catalla ad valenc. &c. but did not retorn what cattel in ſpecie, and it was there held that the retorn was inſufficient, becauſe the cattel by which the Defendant is attached, are forfeited to the King, at the day of the retorn, if the Defendant makes default. *Attached* per catalla ad valenc. *but doth not retorn what cattel.*

CAP. VI.

Eſcape.

SECT. 1.

Where the Sheriff ſhall be chargeable therewith, and where the Bailiff; and what ſhall be adjudged an Eſcape, and how the Sheriff may diſcharge himſelf by act in Law, &c.

First, Where the Sheriff ſhall be chargeable for Eſcapes, and where the Bailiff, &c.

A Serjeant ſuffers a Priſoner taken upon a plaint to Eſcape, he only is chargeable.

IF a plaint is levyed in the Sheriffs Court in London, and thereupon a Serjeant at Mace takes the Defendant, and in carrying of him towards the Compter, the Priſoner Eſcapes, here the Serjeant only is lyable to an action for this Eſcape, and not the Sheriff: becauſe the Priſoner not being within the walls of the Compter, was never in the Sheriffs cuſtody: The Sheriff is the Judge of that Court, and not a Miniſterial Officer to execute Proceſs there; but he is Gaoler of the Compter, and ought to anſwer for all Priſoners there. Dun verſ. Pary Mich. 13 Car. in B. R. Rolls tit. Eſcape 806.

The Sheriff is Judge, not an Officer of that Court, though Gaoler of the Compter.

Yet it is otherwiſe upon an arreſt upon a Lat. for if an Eſcape is ſuffered, there the Sheriff is chargeable.

But if a Serjeant at Mace arreſt a man by vertue of a Warrant iſſuing out upon a Latitat, and afterwards ſuffers him to Eſcape, before he brings him to the Compter; here in this caſe an action lyes againſt the Sheriff only for this Eſcape, becauſe he was in the cuſtody of the Sheriff preſently upon this arreſt; and the Sheriff is the Officer of the Court of Kings Bench, and not the Serjeant. Ibidem.

Where a Bailiff-errant is chargeable.

Where an Under-Sheriff is chargeable.

Yet for a Bailiffs inſufficient return, the Sheriff is chargeable.

But if a Bailiff-errant take a man in Execution, and he ſuffer him to Eſcape, an action lyeth againſt the Bailiff himſelf; ſo likewiſe it is in caſe of an Under-Sheriff: for it may be the High-Sheriff knew nothing of the matter, becauſe the Writ was delivered to the Under-Sheriff, and he took a fee for it, and therefore it is reaſon that he ſhould be puniſhed: But if a Return made by a Bailiff be inſufficient, there the High-Sheriff ſhall be amerced. Per Snag Juſtice, inſt. Marſh & Aſtrey, Leon. 1 part. 146.

If I. S. puts his own name in a warrant, and ſuffers an Eſcape, the Sheriff is not chargeable herewith.

But if the Sheriff directs his Warrant to his Bailiff, and afterwards I. S. puts in his own name, as ſpecial Bailiff, and thereupon arreſts the Defendant, who Eſcapes; here I. S. ſhall be only chargeable, and not the Sheriff, becauſe the Defendant was never in the Sheriffs cuſtody, but only in the cuſtody of I. S. Brown verſ. Adams, Cr. El. 745.

What

What ſhall be an Eſcape in the Sheriff or Gaoler, &c.

Froſts caſe, 5 R. 89.

If the Sheriff hath one in his cuſtody, againſt whom one B. hath a Judgement, if B. while the party is in the Sheriffs cuſtody, bring a Ca. Sa. to the Sheriff, and deſire him to detain him by virtue thereof, and the Sheriff refuſes, but ſuffers him to go at large; It was held by the Court, that this was an Eſcape in Law, for which an action well lyes.

It is an Eſcape for the Sheriff, not to charge a Priſoner in Execution, after an Execution delivered to him.

Norgates caſe, Tr. 13 Jac. per Cook. Rolls tit. Eſcape 810.

A man recovers againſt two joyntly, and takes both of them in Execution, and afterwards one of them is ſuffered to Eſcape: The Sheriff is lyable to an action for this Eſcape, though the other continue in priſon, & the whole Debt ſhall be recovered againſt the Sheriff.

A Judgement is had againſt two, one of them Eſcapes, the Sheriff ſhall pay the whole Debt.

Dr. Surcliffe verſ. Sir Geo. Reynell, Tr. 13 Jac. Rolls tit. Eſcape 810.

So likewiſe where a man recovers againſt a man and his wife, and takes them both in Execution, and the wife Eſcapes; the Sheriff ſhall be charged with this Eſcape, and the whole Debt ſhall be recovered againſt him, though the husband continue in priſon.

Judgement againſt husband and wife, they are both taken, the wife Eſcapes; the Sheriff ſhall pay the whole Debt.

The Sheriff of Eſſex his caſe, Hob. 202.

If a Priſoner is willingly let out of priſon by the Sheriff or Gaoler, and afterwards of his own accord, comes into the priſon again, yet this is an Eſcape in Law, for which the Sheriff is chargeable: For the Priſoners rendring of himſelf again, hath not purged the Eſcape.

For a Priſoner to be let out of priſon, although he return again, is an Eſcape.

What liberty a Priſoner in Execution may have upon a *Hab. Corp.*

Mich. 14 Car. Cr. Car. 14. Balden verſ. Temple, Mic. 15 Jac. Hob. Rep. 202.

Although when a Hab. Corp. is granted for a Priſoner in Execution, it is not juſtifiable for the Marſhall, by colour thereof, to let the Priſoner go at large with his Keeper in the vacation or Term time, untill the appointed time when he is to return to priſon; for the priſon Keeper ſhall have only a convenient time to bring the Priſoner in Court, and to carry him back to priſon again; and if they ſhall let him go at large any longer time than is convenient, it is an Eſcape.

upon a Hab. Corp. in the vacation, the Sheriff muſt not let the Priſoner go at large, without his Keeper.

Nota, The Court is to judge how long time is convenient to bring a Priſoner before them, and how long time is ſufficient to return him again.

what time the Sheriff is allowed to bring in his Priſoners.

Trin. 12 Car. Cr. Car. 466.

So likewiſe afterwards in Tr. 12 Car. it was held by all the Juſtices and Barons, that an Hab. Corp. was an antient and legal Writ, yet under colour thereof, the Warden of the Fleet, nor Marſhall, &c. ought not to ſuffer Priſoners to go at large; for ſuch permiſſion is an abuſe of the Writ, and an Eſcape in the priſon Keeper: which reſolution, the Book ſaith, the King approved very well of, and commanded it to be obſerved.

Smales caſe, Bulſtr. 2 R. 148. Platts caſe, Plo. Com. 36. Dyer 166.

Per Cook Chief Juſtice; Priſoners ſub cuſtodia, are not to go out of the priſon by bail & baſton, unleſs it be by commandment of the King, or of the Kings Writs, or by agreement of the parties, and not otherwiſe; and ſuch kind of liberty given to them by their Keeper, without any ſuch former warrant, is clearly an Eſcape in Law.

Priſoners in Execution muſt not ſtir out of the priſon without a Hab. Corp.

How the Priſoner is puniſhable for an Eſcape.

It was reſolved by the whole Court, That although a Priſoner depart from priſon with his Kæpers licence, yet it is an offence as well puniſhable in the Priſoner, as in the Kæper: And Calthorp made this difference betwixt breach of Priſon, and Eſcape; the firſt is againſt the Gaolers will, the other is with his conſent, but in both caſes the Priſoner is puniſhable; whereunto the whole Court agreed. Sir Miles Hoberſ, and Sir Will. Strouds caſe, Cr. Car. 209.

Eſcape lyes againſt a ſworn Deputy-Marſhall.

A Deputy-Marſhall who was ſworn in open Court, licenced a Priſoner charged in Execution, to go into the Country with a Kæper; and it was adjudged, that although he was but Under-Marſhall, yet he was chargeable, and the action well brought. Gawdyes caſe, Dyer 278.

Where Freſh ſuit ſhall be well made, and how the Sheriff ſhall be diſcharged thereby.

Where freſh ſuit is a good plea.

Debt was brought againſt the Marſhall, for ſuffering a Priſoner in Execution to Eſcape; he pleaded, that the Priſoner broke priſon and eſcaped, and he freſhly purſued her, and took her again in freſh ſuit; and to this plea the Plaintiff demurred: And the Court held, that this was not any plea, becauſe by the action here brought, a voluntary permiſſion ire ad largum is implyed, which is neither denied nor traverſed; and if the Sheriff voluntarily permits a Priſoner to go at large, he cannot re-take him; and ſo this reprizal as is alledged being after the action brought, is no plea. Whiteing verſ. Sir Geo. Reynell, Cr. Jac. 657, 658.

Eſcape.

Freſh ſuit.

Night.

Re-taken before the action brought.

Debt againſt the Sheriff for the Eſcape of a Priſoner in Execution; the Defendant pleads, that the Priſoner eſcaped the 16th. of Dec. and that he freſhly purſued him, and re-took him the 17th. of Dec. and retained him in Execution again; and thereupon it was demurred, and objected, that this was no excuſe; but per Curiam the Sheriff is not lyable to this action, for here the Sheriff uſed his endeavour, and took him again upon freſh ſuit, although that in the night or otherwiſe he might loſe the ſight of him. But if before he be re-taken, an action is brought againſt the Sheriff for the Eſcape, then the re-taking of him afterwards ſhall not avoid the Plaintiffs action, although the re-taking be upon freſh ſuit. Grills verſ. Ridgeway, Cr. El. 439. Tr. 2 Car. Ro. 1179. B. R. Harvey verſ. Sir Geo. Reynell, accord. Trin. 13 Car. Ro. 1107. in B. R. Burford verſ. Somes & Gayer, accord.

The Gaoler makes freſh ſuit ſo ſoon as he hath notice of the Eſcape, and good enough.

If a Priſoner eſcape out of priſon by the negligence of the Kæper, and is abſent by a day and a night, and the Kæper doth not know this, but afterwards when he hath notice of this Eſcape, he makes freſh ſuit and re-takes the Priſoner, this is a good freſh ſuit, and ſhall excuſe him. Mich. 10 Car. B. R. Hinton verſ. Sir Jo. Lenthall, Rolls tit. Eſcape 809.

So likewiſe where a Priſoner eſcaped at nine of the clock at night, and was re-taken the next day immediately after notice, (viz.) at five of the clock in the morning, upon freſh purſuit: Et per Curiam this is a good freſh purſuit. Elton verſ. Sir Jo. Lenthall, Tr. 10 Car. in B. R. Ro. 627. Rolls tit. Eſcape 809.

Repriſal upon freſh ſuit, a quarter of a year after the Eſcape.

A Priſoner in Execution, by practice procured an Hab. Corp. to be removed before Cooke Chief Juſtice, at the Aſſizes in Lent, and then he eſcaped, and afterwards in Eaſter Term following, the Bailiff re-took him, and thereupon he brought an action of falſe impriſonment: And the Court was of opinion, that the freſh ſuit made was good, although he re-took him the next Term after the Eſcape, if enquiry were made after him: And by conſequence it was adjudged, that the action of falſe impriſonment did not lye againſt the Bailiff. Stones caſe, Godb. M. 8 Car.

If

Garnoon verſ. Layton, cited in Yel. Rep. 20. int. Jennings & Hartley, Cr. El. 706, 707. Bonner verſ. Stockly, Cr El. 652. accord. and Edden verſ. Loyd, Cr. El. 877. accor. Dr. Druries caſe, 8 R. 142 b. Hob. Rep. 206. accord.

If a man be taken upon a Cap. Utl. after Judgement, he is in Execution for the party, and if he eſcape, although that he was taken at the Kings ſuit, yet the party hath ſuch an intereſt in his body, that he ſhall have an Eſcape againſt the Sheriff

The Plaintiff may bring an Eſcape againſt the Sheriff, where the Defendant was taken upon a Ca. Utl after Judgement, and Eſcaped.

When a Priſoner is taken by an erroneous Proceſs.

Where a Priſoner is taken upon an erroneous Judgement, and Eſcapes, yet the Sheriff is chargeable.

There is a diverſity betwæn collateral things executory, and executed; for if a man is taken in Execution upon an erroneous Judgement, and Eſcapes, and afterwards the Judgement is reverſed by Writ of Error, the action for the Eſcape is gon; for he may plead nul tiel Record, becauſe without Record the action is not maintainable, but untill the erroneous Judgement or Execution is reverſed by Writ of Error, the Sheriff or Gaoler ſhall not take advantage thereof, for there he cannot plead nul tiel Record, becauſe untill it is reverſed by the award of the Court, it remains in force, although it be manifeſt Error: But if the Plaintiff brings an Eſcape againſt the Sheriff, and hath Judgement and Execution thereupon, and afterwards the firſt Judgement is reverſed, yet becauſe that this Judgement upon this collateral thing is executed, it ſhall remain in force notwithſtanding the reverſal of the firſt Judgement.

Nul tiel Record a good plea for the Sheriff.

Sheriff ſhall not take advantage of Error in Proceſs.

Burton verſ. Eyre, Cr. Jac. 288, 289.

So likewiſe it hath bæn adjudged, where a Teſtat. Ca. ſa. was directed to the Chancellor of Lancaſter, that he ſhould command the Sheriff to take the body of the Defendant, ad ſatisfaciend. &c. Ita quod prædict. Cancellarius haberet corpus def. &c. And thereupon the Chancellor commanded the Sheriff, that he ſhould take the Defendant, ita quod the Sheriff ſhould have him coram Juſticiariis, &c. And then the Sheriff arreſted the Defendant, and afterwards permitted him to eſcape, for which Eſcape the Plaintiff brought his action, and had a verdict: And it was moved in arreſt of Judgement, that the Precept directed by the Chancellor to the Sheriff, was not warranted by the Writ directed to him, for it varies from the command; for it ought to have bæn, that the Sheriff ſhould have the body of the Priſoner before the Chancellor, ita quod he ſhould have him before the Juſtices; and the Warrant is, that the Sheriff himſelf ſhould have him before the Juſtices: Sed non allocatur; for per Curiam, although there be Error in the Proceſs, the Sheriff cannot take advantage thereof, but having ſuffered him to eſcape, he is anſwerable to the party.

If after the original Judgement is reverſed, before a Judgement had againſt the Sheriff, the Sheriff is diſcharged; but if another Judgement is recovered againſt the Sheriff, before the firſt Judgement reverſed, then he is ſtill chargeable.

Cancellarius Lancaſtr.

Eſcape.

Precept.

Variance.

The Sheriff muſt not take advantage of Error in Proceſs.

Ognell verſ. Baſton, Cr. El. 164, 165.

Likewiſe upon a Recogn. in Chancery, 2. Sci. fa. being iſſued out and retorned, ſeveral Queſtions did ariſe:

Recogn.

2. Sci. fa.

Ca. ſa.

1. The firſt Queſtion was, whether a Ca. ſa. lay or no.

2. The ſecond Queſtion was, admitting the Ca. ſa. was not grantable, whether it be void, or only erroneous, ſo as the party muſt avoid it either by Audita querela, or Error.

3. The third Queſtion, a Priſoner is in priſon for ſuſpicion of Felony, whether or no he may be charged in Execution by vertue of a Ca. ſa.

As to all theſe points the Court reſolved:

1. That

Ca. ſa. where it lyes upon a Recogn. in Chancery.

1. That the Proceſs was well awarded, and maintainable by Law, for it being a Debt upon Record, it is not reaſon but the body ſhould be as lyable to Execution upon it, as to a common Obligation.

An Erroneous writ is not void but voidable.

Error.

Sheriff.

2. To the ſecond Queſtion, it was reſolved, admitting the Ca. ſa. lay not, yet it is not void, but erroneous: and this the Sheriff ſhall not diſpute, nor take advantage of; for it was a good warrant for him to take the body, and falſe impriſonment lyeth not againſt him therefore. Conyers Sheriff of Durhams caſe, Cr. El. 576. accord. Keyſar verſ. Tyrrell, Bulſtr 2 R. 256. acc.

Execution may be executed upon a Priſoner for Felony.

3. To the third Queſtion, it was reſolved, that the Execution was well ſerved upon him in priſon, for although his body was at the Kings pleaſure, yet he ſhall not take advantage of his own Tort, (no more ſhall the Sheriff) but he ſhall anſwer the action or Execution of a common perſon.

I ſhall adde but one caſe more, 'tis a caſe touched upon both in Cr. Jac. fo. 3. and Yel. fo. 42. both which Books ſeem to differ; but I find not any reſolution of this caſe, except in this Book only: wherein in an action of Debt brought againſt a Sheriff for an Eſcape, the caſe was thus. Upon a Recogn. acknowledged in Chancery, 2. Sci. fa. were iſſued out and returned; after that there iſſued out a Levari fac. upon which a nulla bona was returned; afterwards the Plaintiff obtained a Ca. ſa. and thereupon took the party in Execution, whom the Sheriff afterwards ſuffered to Eſcape: thereupon this action was brought. Weaver verſ. Clifford, Bulſt 2 R. 62, 63, 6.

Recogn.
2. Sci. fa.
Levari fac.
Ca. ſa.
Eſcape.

Capias upon a Recogn.

Sheriff chargeable.

The Book ſayes, that the Court inclined to be of opinion, Firſt, That that Capias did well lye. Secondly, That the Sheriff was chargeable with the Eſcape. But afterwards the Reporter puts it out of further diſpute, for he ſayes that Judgement was given for the Plaintiff. Weaver verſ. Clifford, Bulſtr. 2 R. fo. 64. fo. 65.

Deus

Minimis Magnus.

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